

**Exhibit 5**

# **Exhibit 5**

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

EMILY FORSYTHE, §  
§  
Plaintiff, §  
§  
V. § C.A. NO. 1:20-cv-10002  
§  
WAYFAIR, LLC, §  
§  
Defendant. §

Remote Videotaped Deposition of TREVOR SHAFFER-FIGUEROA,  
a witness called on behalf of the Defendant, taken  
pursuant to the Massachusetts Rules of Civil Procedure,  
before Lori Atkinson, Notary Public in and for the  
Commonwealth of Massachusetts and Professional Shorthand  
Reporter, conducted via Zoom on Monday, July 27, 2020,  
commencing at 11:00 a.m.

JOB NO. TX 4195485

<p>1 Q. Are there members of the family also live there?</p> <p>2 A. Yes. My husband lives here as well.</p> <p>3 Q. What is his name?</p> <p>4 A. Raphael Figueroa.</p> <p>5 Q. As we sit here today, you are employed by</p> <p>6 Wayfair; correct?</p> <p>7 A. I am.</p> <p>8 Q. What is your title?</p> <p>9 A. Senior manager, talent management.</p> <p>10 Q. And at Wayfair talent management is the name that</p> <p>11 many companies use for human resources, correct?</p> <p>12 A. Yes.</p> <p>13 Q. Have you ever held another position at Wayfair?</p> <p>14 A. No.</p> <p>15 Q. What does Mr. Figueroa do?</p> <p>16 A. He is a massage therapist and a personal trainer.</p> <p>17 Q. I understand that Rancho Mirage is a suburb of a</p> <p>18 larger community in California, correct?</p> <p>19 A. It is a small community just outside of Palm</p> <p>20 Springs.</p> <p>21 Q. Is there a Wayfair facility there?</p> <p>22 A. No.</p> <p>23 Q. So you are working remotely because -- not going</p> <p>24 to Wayfair and Mr. Figueroa?</p> <p style="text-align: right;">Page 6</p>	<p>1 during the pre-COVID period?</p> <p>2 A. Those are the requirements and stipulations of my</p> <p>3 job.</p> <p>4 Q. How near is the nearest Wayfair facility?</p> <p>5 A. The Paris campus is approximately 50 miles from</p> <p>6 my home.</p> <p>7 Q. Next nearest.</p> <p>8 A. City of Industry is approximately 70 miles from</p> <p>9 my home.</p> <p>10 Q. What about Lathrop?</p> <p>11 MS. KAPPELMAN: I think his question is how</p> <p>12 far is it from your home?</p> <p>13 THE WITNESS: Thank you.</p> <p>14 A. I'm not sure of the exact number of miles. It is</p> <p>15 a flight from Palm Springs to Sacramento so it is about</p> <p>16 an hour and a half away by air?</p> <p>17 Q. Are there any facilities besides Paris, City of</p> <p>18 Industry, Lathrop -- are there any facilities besides</p> <p>19 Paris that you have dealt with in your role?</p> <p>20 A. Yes.</p> <p>21 THE COURT REPORTER: I'm sorry, Mr. Goodman,</p> <p>22 I'm really having a hard time hearing you.</p> <p>23 MR. GOODMAN: Let me move this. Is that</p> <p>24 better.</p> <p style="text-align: right;">Page 8</p>
<p>1 A. I'm sorry?</p> <p>2 Q. The employees of Wayfair are not also in Rancho</p> <p>3 Mirage or nearby, correct?</p> <p>4 MS. KAPPELMAN: I can't hear your question,</p> <p>5 Bob, can you sit a little closer to the microphone.</p> <p>6 Q. The employees with whose employment you deal at</p> <p>7 Wayfair are not also in Rancho Mirage; correct?</p> <p>8 A. That is correct.</p> <p>9 Q. You are working remotely because of your marriage</p> <p>10 to Mr. Figueroa and his working in the area, correct?</p> <p>11 A. No.</p> <p>12 Q. Does he have massage therapy patients in Rancho</p> <p>13 Mirage or nearby?</p> <p>14 MS. KAPPELMAN: Objection to the form of.</p> <p>15 Trevor, you don't need to answer these</p> <p>16 questions. They have nothing to do with the case.</p> <p>17 BY MR. GOODMAN:</p> <p>18 Q. Why you are working remotely?</p> <p>19 A. Currently I'm working hundred percent remotely</p> <p>20 due to COVID.</p> <p>21 Q. Prior that?</p> <p>22 A. Prior that my role was 50 percent remote and</p> <p>23 50 percent travel to the sites that I support.</p> <p>24 Q. Why were you working remotely to any extent</p> <p style="text-align: right;">Page 7</p>	<p>1 THE COURT REPORTER: That's better.</p> <p>2 BY MR. GOODMAN:</p> <p>3 Q. What facilities are you dealing with in terms of</p> <p>4 employees whose employment you are having any role in</p> <p>5 besides Paris?</p> <p>6 A. Currently I support Paris, San Leandro, Lathrop</p> <p>7 City of Industry, Oceanside, Portland, Kent, Washington,</p> <p>8 Las Vegas and Phoenix.</p> <p>9 Q. How long have you in been in the human resources</p> <p>10 field?</p> <p>11 A. Since May of 2003.</p> <p>12 Q. When you began in the human resources field, what</p> <p>13 was your first position?</p> <p>14 A. I was a recruiter for the Department of Children</p> <p>15 and Families in Jacksonville, Florida.</p> <p>16 Q. Did you consider yourself an HR professional at</p> <p>17 that time?</p> <p>18 A. Yes.</p> <p>19 Q. What makes one an HR professional?</p> <p>20 MS. KAPPELMAN: In your opinion, Trevor.</p> <p>21 THE WITNESS: Thank you.</p> <p>22 A. Functioning primarily in the field of human</p> <p>23 resources full-time.</p> <p>24 Q. My two paralegals function in the role of the law</p> <p style="text-align: right;">Page 9</p>

<p>1 all the time but they are not legal -- they are not 2 legal professionals just by virtue of that. 3 Is there anything that makes you a professional 4 as opposed to just somebody working in the field? 5 MS. KAPPELMAN: Object to the form of the 6 question. 7 You can answer, Trevor, if you understand 8 it. 9 A. I don't. It is a bit vague. 10 Q. In order to be an HR professional is there 11 anything else besides working in the field that is 12 required? 13 MS. KAPPELMAN: In your opinion, Trevor. 14 A. My opinion, no. 15 Q. No formal education of an HR professional is 16 required? 17 A. It would depend on the role that one was employed 18 in. 19 Q. What circumstances would formal education be 20 required for somebody to consider themselves an HR 21 professional? 22 MS. KAPPELMAN: In your opinion, I guess, is 23 all of this. 24 A. Sure. Any job description that was written by</p> <p style="text-align: right;">Page 10</p>	<p>1 BY MR. GOODMAN: 2 Q. I will restate it. 3 Would you agree with me that a professional 4 properly applies in a logical manner? 5 MS. KAPPELMAN: A professional what? 6 Wrestler? 7 Q. Any kind of professional? Medical professional? 8 An HR professional? 9 MS. KAPPELMAN: Professional wrestler, Bob, 10 would be applying rules. 11 MR. GOODMAN: Yes. Blanket professional. 12 You have rules and you apply them in a logical manner. 13 MS. KAPPELMAN: I object to the form. If 14 understand that question, Trevor, take your best shot. 15 A. I'm sorry, would you repeat the question? 16 Q. Is this profession, as your understand, learn 17 rules about a particular field and then apply in 18 different circumstances in a logical and objective 19 manner? 20 MS. KAPPELMAN: Object to form. 21 You can answer that, Trevor. Go ahead. 22 A. No. 23 Q. So when you have a discrimination policy 24 anti-discrimination or anti-retaliation --</p> <p style="text-align: right;">Page 12</p>
<p>1 the employer to require that education. 2 Q. How many of the positions in the HR field that 3 you've held since you began with your first job for the 4 Department has HR education, formal education, been a 5 requirement? 6 A. A bachelor's degree has been required in every 7 job I've held since obtaining a bachelor's degree. 8 Q. Not specifically in HR? 9 A. No. 10 Q. A master's degree in HR or Ph.D. in HR; correct? 11 A. I have not held a position that required an 12 master's or Ph.D. in human resources. 13 Q. Are you aware of any position at Wayfair that 14 requires a master's or Ph.D. in HR? 15 A. No, I'm not. 16 Q. When did you get your bachelor's? 17 A. I'm sorry. 18 Q. When did you get your bachelor's? 19 A. 2002. 20 Q. Would you agree with me that professionals 21 properly understood and learned rules and applied rules 22 in a logical manner? 23 MS. KAPPELMAN: I'm sorry, can you read that 24 question back.</p> <p style="text-align: right;">Page 11</p>	<p>1 THE COURT REPORTER: I'm sorry, I didn't hear 2 that word. I'm still having a little bit of a problem 3 hearing you? 4 Q. You have dealt with anti-discrimination, 5 anti-retaliation policy for all the employers for whom 6 you've worked; correct? 7 A. No. 8 Q. In your HR role you have not dealt with those 9 kinds of policies? 10 A. In HR I have, yes. 11 Q. So since 2003, correct? 12 A. Since 2203, what? 13 Q. Since 2003, you've dealt with anti-discrimination 14 anti-retaliation policies in the course of doing your 15 job; correct? 16 A. That is correct. 17 Q. They've establish rules; correct? 18 MS. KAPPELMAN: Object to form. 19 BY MR. GOODMAN: 20 Q. The policies, the anti-discrimination 21 anti-retaliation policies established rules; correct? 22 KAPPELMAN MS.: Object to form. 23 You can answer, Trevor. 24 A. Rules can be interpreted from those policies that</p> <p style="text-align: right;">Page 13</p>

<p>1 A. In what way was I involved in? I'm sorry.</p> <p>2 Q. How could you have been involved in her</p> <p>3 employment on the morning of Tuesday, September 24,</p> <p>4 2019, if you were not aware that she had a business trip</p> <p>5 planned to Atlanta that morning?</p> <p>6 A. I don't understand the connection.</p> <p>7 Q. What did you do on the morning of September 24,</p> <p>8 2019, with respect to Ms. Forsythe's employment?</p> <p>9 A. I believe the email that I sent accepting her</p> <p>10 resignation was actually sent on Monday not Tuesday</p> <p>11 morning. I could be mistaken.</p> <p>12 Q. Are you retracting the testimony that you had</p> <p>13 some involvement on Tuesday morning?</p> <p>14 A. No.</p> <p>15 Q. So what involvement did you have on Tuesday</p> <p>16 morning?</p> <p>17 A. I apologize, I thought you said Friday, the 19th.</p> <p>18 Q. I said Tuesday September 27th several times.</p> <p>19 A. Tuesday morning, I don't recall having direct</p> <p>20 interaction with Ms. Forsythe.</p> <p>21 Q. Did you have interaction with anyone concerning</p> <p>22 her employment?</p> <p>23 MS. KAPPELMAN: On Tuesday the 24th.</p> <p>24 THE WITNESS: Tuesday the 24th.</p> <p style="text-align: right;">Page 18</p>	<p>1 A. That's not correct.</p> <p>2 Q. You are not aware that she -- she had worked for</p> <p>3 Wayfair on September 23rd the Monday?</p> <p>4 A. I'm aware that she was employed with Wayfair.</p> <p>5 Q. Did she take Monday off?</p> <p>6 A. Not to my knowledge.</p> <p>7 Q. And between on Friday, Saturday, Sunday, and</p> <p>8 Monday was she communicating with other Wayfair</p> <p>9 employees about Wayfair business?</p> <p>10 MS. KAPPELMAN: If you know.</p> <p>11 A. I don't know.</p> <p>12 Q. Was that your understanding, sir?</p> <p>13 MS. KAPPELMAN: Again, asked and answered.</p> <p>14 You can answer again, Trevor.</p> <p>15 A. Yeah, I don't know.</p> <p>16 Q. Did anybody tell her employment was -- prior to</p> <p>17 the evening of September 23rd, did anybody tell</p> <p>18 Ms. Forsythe her employment with Wayfair had ended?</p> <p>19 A. Her resignation was accepted to my recollection</p> <p>20 on the evening of the 23rd. Prior to that, I'm don't</p> <p>21 know that she would have had any communication that I'm</p> <p>22 aware of.</p> <p>23 Q. But she was employed by Wayfair Friday, Saturday,</p> <p>24 Sunday, and Monday; correct?</p> <p style="text-align: right;">Page 20</p>
<p>1 MS. KAPPELMAN: Yes.</p> <p>2 A. I believe so, yes.</p> <p>3 Q. With who?</p> <p>4 MS. KAPPELMAN: To the extent you had</p> <p>5 interaction with counsel for Wayfair then it is</p> <p>6 protected by the attorney-client privilege and I'm going</p> <p>7 to direct you not to respond. If you had interaction</p> <p>8 with anyone other than counsel for Wayfair, inside or</p> <p>9 outside, go ahead an answer, substantively. Okay.</p> <p>10 A. I can't respond.</p> <p>11 MR. GOODMAN: He can identify whether he had</p> <p>12 communications with counsel. What is protected is the</p> <p>13 substance of those. Are you directing him not to answer</p> <p>14 whether he had any communications with another Wayfair</p> <p>15 employer on Tuesday, September 24th?</p> <p>16 MS. KAPPELMAN: No, I'm directing him not to</p> <p>17 get into the substance of any communication with inside</p> <p>18 or outside counsel.</p> <p>19 But if he had communications with counsel,</p> <p>20 then he can say that.</p> <p>21 A. Yes, I had communication with counsel on Tuesday</p> <p>22 morning.</p> <p>23 Q. You were aware that Ms. Forsythe had worked the</p> <p>24 prior day, correct?</p> <p style="text-align: right;">Page 19</p>	<p>1 A. Yes.</p> <p>2 Q. And what you are calling her resignation was tied</p> <p>3 to a conversation that you had with her the prior</p> <p>4 Thursday; correct?</p> <p>5 A. Yes.</p> <p>6 Q. She never conceded in a conversation with you or</p> <p>7 in any writing in which you are aware that there had</p> <p>8 been any resignation communicated in a call on Thursday</p> <p>9 September 19, 2019, did you?</p> <p>10 A. I'm sorry, I don't understand the question.</p> <p>11 Q. You didn't hear anything from Emily on Friday,</p> <p>12 Saturday, Sunday, Monday conceding that she had resigned</p> <p>13 on Thursday, did? You.</p> <p>14 A. That's not correct.</p> <p>15 Q. On Friday what did she say or write to you on</p> <p>16 Friday that conceded that she had resigned, sir?</p> <p>17 A. We didn't speak on Friday we spoke on Thursday.</p> <p>18 Q. Sir, please listen to my question.</p> <p>19 MS. KAPPELMAN: He is listening to your</p> <p>20 question and he is responding.</p> <p>21 Q. Sir, when I said Friday, Saturday, Sunday and</p> <p>22 Monday did I say Thursday?</p> <p>23 A. I don't recall. But the court reporter would</p> <p>24 probably have that.</p> <p style="text-align: right;">Page 21</p>

<p>1 Q. On Friday, Saturday, Sunday, Monday did you have 2 any written or verbal communications with Ms. Forsythe 3 director or indirectly? 4 A. I believe Friday morning she sent me a message. 5 But I don't recall if it was Friday morning or Thursday 6 evening indicating that she wanted to take Friday off. 7 Q. Did you get any message about her wanting to take 8 Monday off? 9 A. Not that I recall. 10 Q. In your experience at Wayfair how many employees 11 whose employment you were addressing resigned -- 12 resigned? 13 MS. KAPPELMAN: Objection to the form of the 14 question. 15 If you understand that Trevor, answer it. 16 A. I don't fully. 17 Q. Since you have been at Wayfair how many employees 18 whose employment you were actively addressing by 19 speaking them or -- I will say by being in written or 20 verbal communication about their employment have 21 resigned during the process of those communications? 22 A. I have no idea. 23 Q. Have any allegedly done so beside Ms. Forsythe? 24 A. Have any employees resigned?</p> <p style="text-align: right;">Page 22</p>	<p>1 Q. Was it a written communication to somebody else? 2 A. I wouldn't have that information. 3 Q. How did you find out about that resignation? 4 A. The employee told me that resigned. 5 Q. The past tense; correct? 6 A. Yes. 7 Q. Did they tell who they communicated that to? 8 A. No. 9 Q. There are no other resignations that happened 10 while you were discussing somebody's employment with 11 them or investigating a complaint by them besides that 12 one and Ms. Forsythe, according to you? 13 A. At Wayfair, no. 14 Q. Has it happened at any prior employer? 15 A. Yes. 16 Q. On how many occasions? 17 A. I would have to approximate. 18 Q. Okay, you may. 19 A. Five. 20 Q. How many of the five provided a written letter of 21 resignation for themselves put resignation into an HRIS 22 system? 23 A. I don't recall. Not all of them. 24 Q. Those who did not did they verbally communicate a</p> <p style="text-align: right;">Page 24</p>
<p>1 Q. While you were in the middle of verbal or written 2 communications with them about their employment? 3 A. Employees have resigned to me. 4 But if you are asking if anyone has resigned 5 during the course of an investigation, no. 6 Q. When employees resign to you, how many occasions 7 has that occurred? 8 A. Technically I see every resignation in the field 9 because I receive an email notification when anyone 10 enters a resignation into our HRIS system. 11 Q. In other words, the employees can put that into 12 the HRIS system? 13 A. That is an option for them, yes? 14 Q. Ms. Forsythe never did that; correct? 15 A. Not to my knowledge. 16 Q. Let me go back my question. 17 A. Okay. 18 Q. How many employees during your time at Wayfair 19 when you are in communication with them about their 20 employment whether or not it's in the course of an 21 investigation or not have resigned? 22 A. One that I can recall. 23 Q. Was that a written resignation communication? 24 A. Not directly to me.</p> <p style="text-align: right;">Page 23</p>	<p>1 resignation? 2 A. Yes. 3 Q. Did they use the word resign or quit? 4 A. No. 5 Q. What word did they use to convey their 6 resignation? 7 MS. KAPPELMAN: All of them? Each of them? 8 MR. GOODMAN: There is only four or five? I'm 9 not asking for name. I'm asking for circumstances. 10 A. Of the two specifics that I can recall one said 11 something along the lines of, "I'm out of here." The 12 other one used more colorful language. 13 Q. That's two of four or five. 14 Did the others give a written communication that 15 they were resigning? 16 A. Not that I recall. 17 Q. They just verbally communicated it? 18 A. As I recall, yes. 19 Q. Ms. Forsythe did not use the term quit or resign 20 from Thursday September 19, 2018 with you, did she? 21 A. I don't recall her using either of those words. 22 Q. She didn't use the same colorful term that 23 somebody else would use in a prior employer, whoever 24 that was; correct?</p> <p style="text-align: right;">Page 25</p>

<p>1 A. No. Her language was always appropriate with me.</p> <p>2 Q. That was the colorful term that was used?</p> <p>3 A. In the previous incident?</p> <p>4 Q. Yes?</p> <p>5 A. While I was investigating an incident with</p> <p>6 Aarons, one of my previous employers, an associate</p> <p>7 grabbed his items off the table and told me to go "F"</p> <p>8 myself.</p> <p>9 Q. This notion of telling Ms. Forsythe four days</p> <p>10 after September 19th, that her purported resignation was</p> <p>11 being accepted was not one that originated in your head,</p> <p>12 did it?</p> <p>13 MS. KAPPELMAN: Object.</p> <p>14 To the extent it arose out of conversations</p> <p>15 with Wayfair's inside or outside counsel, I'm going to</p> <p>16 direct you not to answer.</p> <p>17 MR. GOODMAN: I'm asking about any</p> <p>18 communication.</p> <p>19 MS. KAPPELMAN: You are.</p> <p>20 MR. GOODMAN: Then you are waiving it. Let</p> <p>21 me reask the question.</p> <p>22 BY MR. GOODMAN:</p> <p>23 Q. Did that idea of accepting a purported</p> <p>24 resignation four days after the fact was that Mr.</p> <p style="text-align: right;">Page 26</p>	<p>1 Q. Saturday?</p> <p>2 A. No.</p> <p>3 Q. Friday?</p> <p>4 A. You are referring to the call about sending an</p> <p>5 email.</p> <p>6 Q. The video call?</p> <p>7 A. Yes.</p> <p>8 Q. It was on Friday?</p> <p>9 A. Yes.</p> <p>10 Q. Did you have any communications with Mr. Berendt</p> <p>11 after Friday before Tuesday morning?</p> <p>12 MS. KAPPELMAN: After Friday the 20th but</p> <p>13 before Tuesday the 24th.</p> <p>14 MR. GOODMAN: Right. So the next three</p> <p>15 days.</p> <p>16 A. Yes, I was.</p> <p>17 Q. When was last call?</p> <p>18 A. I believe it was on Monday evening.</p> <p>19 Q. Minutes before you communicated with</p> <p>20 Ms. Forsythe?</p> <p>21 A. Within minutes of I believe you contacting me</p> <p>22 directly.</p> <p>23 Q. Minutes before that?</p> <p>24 A. Minutes after.</p> <p style="text-align: right;">Page 28</p>
<p>1 Shaffer your idea?</p> <p>2 A. No.</p> <p>3 Q. What was the name of the attorney or attorneys</p> <p>4 you were talking to between September 19th, and</p> <p>5 September 24, 2019 about Emily Forsythe?</p> <p>6 MS. KAPPELMAN: You can identify their</p> <p>7 names.</p> <p>8 A. Mike Berendt.</p> <p>9 Q. Anybody else?</p> <p>10 A. There were others in the conversation. Are you</p> <p>11 asking me if there were other attorneys present?</p> <p>12 Q. When you say there were others in the</p> <p>13 conversation, do you mean over the phone?</p> <p>14 A. No. I believe it was a video call.</p> <p>15 Q. By title or by the nature of their position who</p> <p>16 were the other employees?</p> <p>17 MS. KAPPELMAN: I'm sorry, what is the</p> <p>18 question, Bob.</p> <p>19 MR. GOODMAN: Let me ask it in two ways</p> <p>20 Q. Were the other employees on this video call, was</p> <p>21 the video call on Monday the 23rd.</p> <p>22 A. No.</p> <p>23 Q. Was it on Sunday?</p> <p>24 A. No.</p> <p style="text-align: right;">Page 27</p>	<p>1 Q. What was the time relative to your sending that</p> <p>2 communication to Ms. Forsythe on Monday evening? Was it</p> <p>3 before or after?</p> <p>4 A. My conversation with Mike was after me sending</p> <p>5 the communication and after you calling me.</p> <p>6 Q. Which came first your communications or counsel</p> <p>7 calling?</p> <p>8 MS. KAPPELMAN: I think what he is asking</p> <p>9 which came first, you sending the communication to Emily</p> <p>10 Forsythe or your conversation with Bob Goodman, her</p> <p>11 lawyer.</p> <p>12 A. I sent the email after which I received</p> <p>13 communications from Mr. Goodman.</p> <p>14 Q. Prior to Wayfair have you ever conducted an</p> <p>15 investigation for discrimination or retaliation?</p> <p>16 A. Yes.</p> <p>17 Q. When was the first employer you did that for?</p> <p>18 A. The State of Florida.</p> <p>19 Q. Did you do that for every employer?</p> <p>20 A. No.</p> <p>21 Q. Which ones did you not do it for?</p> <p>22 A. St. Vincent's Medical Center in Jacksonville,</p> <p>23 Florida and Solantic Urgent Care also in Jacksonville,</p> <p>24 Florida.</p> <p style="text-align: right;">Page 29</p>

<p>1 A. That seems like a broad generalization.</p> <p>2 Q. If you are being thorough then why don't you test</p> <p>3 the credibility of what people have told you or the</p> <p>4 credibility of what people have told you by speaking</p> <p>5 with the complainant, him or herself, to find out what</p> <p>6 others have said are a credible positions or even</p> <p>7 possible positions?</p> <p>8 A. I apologize, I'm still not understanding what you</p> <p>9 are asking.</p> <p>10 Q. If you had a witness say, "I saw the complainant</p> <p>11 on such and such a day in such and such a place.</p> <p>12 And you never went back to the complainant, you</p> <p>13 might miss the fact that the complainant was halfway</p> <p>14 across the country on that very day and not at the place</p> <p>15 that the witnesses said; correct?</p> <p>16 MS. KAPPELMAN: Object to the form of the</p> <p>17 question.</p> <p>18 Trevor, if you understand what he's getting</p> <p>19 at. Go ahead and answer.</p> <p>20 THE WITNESS: I think I'm beginning to.</p> <p>21 A. If new information is presented during the course</p> <p>22 of the witness interview, it may be appropriate to</p> <p>23 circle back to the complainant. I think that's what I</p> <p>24 understand your question to ask.</p> <p style="text-align: right;">Page 34</p>	<p>1 1 THE VIDEOGRAPHER: We are going off the</p> <p>2 11:45 2 record. The time is a.m. eastern</p> <p>3 time we are</p> <p>4 3 going off the record. This is the end of media file</p> <p>5 4 one.</p> <p>6 5 (Pause in the proceedings.)</p> <p>7 6 THE VIDEOGRAPHER: We are back on the</p> <p>8 11:47 7 record. The time is a.m. eastern</p> <p>9 8 time. This is</p> <p>10 9 the beginning the of media file number two.</p> <p>11 10 BY MR. GOODMAN:</p> <p>12 11 Q. Mr. Shaffer, how many minutes did you take to</p> <p>13 12 investigate the retaliation claim of Ms. Forsythe that</p> <p>14 13 was made on September 19, 2019?</p> <p>15 14 A. How many minutes?</p> <p>16 15 Q. Yes?</p> <p>17 16 A. I don't recall.</p> <p>18 17 Q. Do you remember how many hours?</p> <p>19 18 A. I do not.</p> <p>20 19 Q. Ms. Forsythe did make a complaint retaliation</p> <p>21 20 that day, did she not?</p> <p>22 21 A. She did. I'm sorry on which day? I don't recall</p> <p>23 22 the exact date.</p> <p>24 23 Q. It was the date of a conversation that</p> <p>25 24 Mr. Berendt later thought could justify a resignation</p> <p>claim; correct?</p> <p style="text-align: right;">Page 36</p>
<p>1 MR. GOODMAN: I object to the part that is</p> <p>2 not responsive.</p> <p>3 Q. So you go back to the complainant some of time</p> <p>4 but not all of the time is that what I'm gathering?</p> <p>5 A. Depending on the nature of the information; yes,</p> <p>6 correct.</p> <p>7 Q. What type of information justifies your going</p> <p>8 back to the complainant to complete the investigation</p> <p>9 with the professional?</p> <p>10 MR. GOODMAN: Object to the form of the</p> <p>11 question. You almost had a good question there, Bob.</p> <p>12 Go ahead, Trevor.</p> <p>13 A. As an example I would circle back to a</p> <p>14 complainant if a witness provided new information for</p> <p>15 which the complainant could either provide context or</p> <p>16 that would allow me to better understand the</p> <p>17 complainant's original statement that directed me to</p> <p>18 that witness.</p> <p>19 But I would not necessarily reveal all of the</p> <p>20 details that a witness provided to me as that could</p> <p>21 potentially violate the confidentiality of the</p> <p>22 investigation.</p> <p>23 THE COURT REPORTER: Excuse me, I take one</p> <p>24 minute. The battery on my computer is low.</p> <p style="text-align: right;">Page 35</p>	<p>1 MS. KAPPELMAN: Object to the form.</p> <p>2 I don't want you to answer that question</p> <p>3 because it asks for the substance of any conversation</p> <p>4 that you had with inside counsel Mr. Berendt, I'm</p> <p>5 directing you not to answer.</p> <p>6 BY MR. GOODMAN:</p> <p>7 Q. It was the same day as the conversation that</p> <p>8 Wayfair later used to suggest that Ms. Forsythe had</p> <p>9 resigned; correct?</p> <p>10 MS. KAPPELMAN: Same objection.</p> <p>11 Try it again, Bob.</p> <p>12 BY MR. GOODMAN:</p> <p>13 Q. Was it that Thursday, sir? That Thursday prior</p> <p>14 to her last day?</p> <p>15 A. Did Ms. Forsythe make?</p> <p>16 Q. Make or claim a retaliation that same day?</p> <p>17 A. I believe it was either that Thursday or Friday.</p> <p>18 Excuse me, the Thursday or Wednesday the night before.</p> <p>19 I don't recall which.</p> <p>20 Q. You communicated to her on September 19, within a</p> <p>21 few hours that you had you had rejected the complaint,</p> <p>22 correct?</p> <p>23 A. I didn't reject the complaint, no.</p> <p>24 Q. You told her the complaint -- in your view the</p> <p style="text-align: right;">Page 37</p>



<p>1 complaint was unfounded; correct?</p> <p>2 A. No. I said that I was unable to substantiate the</p> <p>3 claim of retaliation?</p> <p>4 Q. Who did you speak to about the complaint besides</p> <p>5 Emily?</p> <p>6 MS. KAPPELMAN: That is the retaliation</p> <p>7 complaint we are talking about, Trevor?</p> <p>8 MR. GOODMAN: It is.</p> <p>9 A. The individual that she complained about. I</p> <p>10 spoke to the accused and I spoke to Candice Smith.</p> <p>11 Q. Ms. Smith was not a witness to any aspect of the</p> <p>12 complaint, correct?</p> <p>13 MS. KAPPELMAN: Object to the form of the</p> <p>14 question.</p> <p>15 You can answer, Trevor.</p> <p>16 A. I believe the complaint came via email that she</p> <p>17 that also received.</p> <p>18 Q. She was not a witness to any of the actions that</p> <p>19 were the basis of the complaint of retaliation, was she?</p> <p>20 MS. KAPPELMAN: Object to the form of the</p> <p>21 question.</p> <p>22 You can answer, Trevor.</p> <p>23 A. There were no witnesses according to Ms.</p> <p>24 Forsythe.</p> <p style="text-align: right;">Page 38</p>	<p>1 question. Object to the word dismissed.</p> <p>2 You can answer, Trevor.</p> <p>3 A. I didn't dismiss anyone's claim. I did find that</p> <p>4 the allegation was unsubstantiated.</p> <p>5 Q. Now it is just you could not substantiate, it was</p> <p>6 actually it was unsubstantiated. Do I understand that</p> <p>7 correctly.</p> <p>8 A. I was not able to substantiate the allegation.</p> <p>9 Q. Could you not substantiate? You were not able to</p> <p>10 substantiate it? Or it wasn't substantiated? Which one</p> <p>11 did you communicate to her?</p> <p>12 A. All three of those synonymous and I would use</p> <p>13 those interchangeably.</p> <p>14 Q. By your best estimate, how many hours was it</p> <p>15 between overseeing that complaint and your telling her</p> <p>16 one of those three things or all of those three things?</p> <p>17 A. I honestly don't recall. It was within a 24-</p> <p>18 hour period but I do not recall it took from the time</p> <p>19 that I received until the time that I communicated to</p> <p>20 her that the allegation was unsubstantiated.</p> <p>21 Q. Did you ever conduct an investigation of a</p> <p>22 discrimination or retaliation claim and concluded within</p> <p>23 less than a 24 hour period?</p> <p>24 A. Yes.</p> <p style="text-align: right;">Page 40</p>
<p>1 Q. Well, two people were involved in the event which</p> <p>2 she claimed was retaliatory, correct?</p> <p>3 A. That's correct. The complainant and the accused?</p> <p>4 Q. Ms. Smith is your boss; right?</p> <p>5 A. That is not correct.</p> <p>6 Q. That is Ms. Smith's relation to you in the HR</p> <p>7 function?</p> <p>8 A. Currently there is no relationship.</p> <p>9 At the time she was the person to whom my boss</p> <p>10 report. So she was my skip level.</p> <p>11 Q. Second line of report?</p> <p>12 A. Yes.</p> <p>13 Q. At any of your other places of employment have</p> <p>14 you dismissed a retaliation complaint or a discrimination</p> <p>15 complaint within several hours?</p> <p>16 MS. KAPPELMAN: Object to the form of the</p> <p>17 question. Assumes facts not in evidence.</p> <p>18 You can answer.</p> <p>19 A. I honestly don't recall the timelines of any of</p> <p>20 those investigations.</p> <p>21 Q. This one, so that we are clear, you got the</p> <p>22 complaint on one day and dismissed it, the</p> <p>23 communication, with Emily the same day, correct?</p> <p>24 MS. KAPPELMAN: Object to the form of the</p> <p style="text-align: right;">Page 39</p>	<p>1 Q. What were the circumstances?</p> <p>2 MS. KAPPELMAN: I'm going to direct you not</p> <p>3 to answer to the extent that it is not relevant to this</p> <p>4 case, to these parties.</p> <p>5 BY MR. GOODMAN:</p> <p>6 Q. You can answer it to the extent it is relevant.</p> <p>7 MS. KAPPELMAN: I'm not sure how it could be</p> <p>8 relevant if it was a different investigation, Bob. I'm</p> <p>9 going to direct him not to answer.</p> <p>10 MR. GOODMAN: You said to the extent.</p> <p>11 MS. KAPPELMAN: Well, it is kind of obvious</p> <p>12 that the extent is that it is a different investigation</p> <p>13 involving different people so it is not relevant to this</p> <p>14 one.</p> <p>15 MR. GOODMAN: Are you instructing him not to</p> <p>16 answer then whether he has ever had a shorter</p> <p>17 investigation of a discrimination or retaliation at any</p> <p>18 time in his HR career?</p> <p>19 MS. KAPPELMAN: No, I don't think that was</p> <p>20 the question. You can ask him that question. You</p> <p>21 already asked him that but you can ask him again.</p> <p>22 Q. Have you ever had a shorter investigation of a</p> <p>23 discrimination, retaliation complaint during any other</p> <p>24 part of your career besides that one?</p> <p style="text-align: right;">Page 41</p>

<p>1 A. Yes.</p> <p>2 Q. What were the circumstances?</p> <p>3 MS. KAPPELMAN: Again, I'm going to direct</p> <p>4 not to answer about the circumstance of any</p> <p>5 investigation --</p> <p>6 MR. GOODMAN: You are not allowing me a</p> <p>7 follow-up question, counsel.</p> <p>8 MS. KAPPELMAN: I will put my objection on</p> <p>9 this record. What you are asking him about is</p> <p>10 investigations that involve people, private parties that</p> <p>11 are not parties to this action.</p> <p>12 And it is not relevant or proportional and</p> <p>13 they have a privacy right and a confidentiality right</p> <p>14 beyond that.</p> <p>15 MR. GOODMAN: I'm not remotely asking for</p> <p>16 names. Counsel, you are precluding the witness from</p> <p>17 addressing whether there was any similarly short</p> <p>18 investigation at any time in his HR career. Even though</p> <p>19 I'm not asking about anybody specific.</p> <p>20 MS. KAPPELMAN: I allowed you to ask the</p> <p>21 question if he had a shorter investigation. He</p> <p>22 responded to that question. You asked a very</p> <p>23 generalized question.</p> <p>24 If you want to ask a more specific question</p> <p style="text-align: right;">Page 42</p>	<p>1 headquarters employee?</p> <p>2 A. Yes.</p> <p>3 Q. What does that mean?</p> <p>4 A. An employee who is based out of Boston.</p> <p>5 Q. Do you know why Ms. Forsythe maintained a work</p> <p>6 location and phone number at the Boston headquarters</p> <p>7 during her employment at Wayfair?</p> <p>8 A. Do I know why she did that?</p> <p>9 Q. Yes?</p> <p>10 A. No, I do not.</p> <p>11 Q. Do you know why she was permitted to do that?</p> <p>12 A. No, I do not.</p> <p>13 Q. You claim to have conducted an investigation of</p> <p>14 the sexual harassment complaint by an Emily cornering</p> <p>15 Mike McDole?</p> <p>16 A. Yes, that's correct.</p> <p>17 Q. What words did you use to tell Ms. Forsythe what</p> <p>18 the conclusion of your investigation was?</p> <p>19 A. I don't recall the exact words that I used when</p> <p>20 speaking to her.</p> <p>21 Q. Was it one of these three things that you walked</p> <p>22 about before?</p> <p>23 MS. KAPPELMAN: Object to the form of the</p> <p>24 question.</p> <p style="text-align: right;">Page 44</p>
<p>1 that doesn't invade the privacy rights of other people,</p> <p>2 perhaps that won't be objectionable so why don't you</p> <p>3 give it a try.</p> <p>4 BY MR. GOODMAN:</p> <p>5 Q. Did that ever happened at Wayfair that there was</p> <p>6 a shorter investigation?</p> <p>7 A. That I conducted, no.</p> <p>8 Q. Or that you are aware of anybody in HR at Wayfair</p> <p>9 conducting?</p> <p>10 A. I would only have direct line of site to those</p> <p>11 investigations that were conducted by individuals that</p> <p>12 report to me but to the extent that I can answer it with</p> <p>13 those individuals, no.</p> <p>14 Q. Your subordinates or peers at regional HR?</p> <p>15 A. I would prefer to the word team. But yes, they</p> <p>16 are subordinate to my role.</p> <p>17 Q. Have you ever worked for Wayfair in Boston other</p> <p>18 than on a business trip?</p> <p>19 A. No.</p> <p>20 Q. Do you understand that concept of Wayfair</p> <p>21 employees in locations other than Boston maintaining a</p> <p>22 desk in Boston?</p> <p>23 A. I'm not aware of that.</p> <p>24 Q. Are you aware of the concept at Wayfair of a</p> <p style="text-align: right;">Page 43</p>	<p>1 BY MR. GOODMAN:</p> <p>2 Q. These three passive ways of saying that I'm</p> <p>3 objecting to merit of the complaint?</p> <p>4 MS. KAPPELMAN: Object to the form of the</p> <p>5 question. He never said I am objecting to the merit the</p> <p>6 of complaint. Are you talking about the ways he would</p> <p>7 phrase that a complaint was unsubstantiated.</p> <p>8 MR. GOODMAN: I will ask the question,</p> <p>9 counselor.</p> <p>10 Q. Did you phrase it in one of the three ways you</p> <p>11 referred to a few minutes ago.</p> <p>12 MS. KAPPELMAN: Object to the form. If you know</p> <p>13 what he is talking about perhaps he can be a little more</p> <p>14 specific. But if you know what he is talking about, be</p> <p>15 clear?</p> <p>16 A. I don't recall the exact words that I used when</p> <p>17 speaking to Ms. Forsythe to tell her that the</p> <p>18 allegations were unsubstantiated.</p> <p>19 Q. The substance of the allegations of sexual</p> <p>20 harassment were by Mr. McDole were unsubstantiated;</p> <p>21 correct?</p> <p>22 A. Yes.</p> <p>23 Q. That was because he denied the allegations;</p> <p>24 correct?</p> <p style="text-align: right;">Page 45</p>

<p>1 A. Are you asking me --</p> <p>2 Q. He denied allegations of unconsented touching of</p> <p>3 Emily?</p> <p>4 A. Yes, he denied that.</p> <p>5 Q. You did not give him a lie detector test;</p> <p>6 correct?</p> <p>7 A. No, I did not.</p> <p>8 Q. Why not?</p> <p>9 A. Why did I not give someone a lie detector test?</p> <p>10 Q. Right?</p> <p>11 A. I'm not qualified to do so nor has it ever been</p> <p>12 part of an investigation for which I have been</p> <p>13 responsible for.</p> <p>14 Q. You didn't arrange for that either, did you?</p> <p>15 A. No, I did not.</p> <p>16 Q. Did you communicate the allegations of sexual</p> <p>17 harassment to Mr. McDole using the precise words of the</p> <p>18 complaint by Ms. Forsythe or did you put it in your own</p> <p>19 words?</p> <p>20 A. Both.</p> <p>21 Q. So you read or showed him her complaint?</p> <p>22 A. No.</p> <p>23 Q. Then when you say both, I can imagine your own</p> <p>24 words part. What words of Ms. Forsythe did you use?</p> <p style="text-align: right;">Page 46</p>	<p>1 Mike had been suggestively inappropriate or flirtatious</p> <p>2 with her and that this witness would substantiate that.</p> <p>3 Q. Again, focusing on the instances of unconsented</p> <p>4 touching was there anything other than Mr. McDole's</p> <p>5 denial which led to you to conclude that the incidence</p> <p>6 of unconsented touching could not be substantiated?</p> <p>7 A. Yes.</p> <p>8 Q. What was it?</p> <p>9 A. There was no other available evidence.</p> <p>10 Q. At Wayfair when a woman is touched by a man</p> <p>11 without her consent, with the two of them alone, her</p> <p>12 claims can never be, in your terms, substantiated;</p> <p>13 correct?</p> <p>14 MS. KAPPELMAN: Objection to the form.</p> <p>15 You can answer.</p> <p>16 A. No, that is not correct.</p> <p>17 Q. Well, in any instance of physical sexual</p> <p>18 harassment were there are no third-party witnesses, how</p> <p>19 can a -- let me ask it this way: Does the alleged</p> <p>20 harasser have to admit to unconsented touching for it to</p> <p>21 be substantiated at Wayfair?</p> <p>22 A. Not necessarily.</p> <p>23 Q. When you have an allegation of physical sexual</p> <p>24 harassment at Wayfair by a man or a woman and the two</p> <p style="text-align: right;">Page 48</p>
<p>1 A. I don't recall exactly.</p> <p>2 Q. Did you talk about the location of the incidence</p> <p>3 to Mr. McDole that were alleged?</p> <p>4 A. Yes.</p> <p>5 Q. Did you talk about the timing?</p> <p>6 A. In approximations, yes.</p> <p>7 Q. Did he say that "I was not in that place on that</p> <p>8 -- around that time in response to any of the</p> <p>9 allegations as you have described them to him?</p> <p>10 A. Not that I recall.</p> <p>11 Q. Besides Mr. McDole's denial was there any other</p> <p>12 basis for the claim that Emily's complaints of</p> <p>13 unconsented touching were unsubstantiated?</p> <p>14 A. I'm sorry, can you repeat the question.</p> <p>15 Q. Besides Mr. McDole's denial of unconsented</p> <p>16 touching was there anything else that led you to tell</p> <p>17 Emily has her claims of un consented touching were</p> <p>18 unsubstantiated?</p> <p>19 A. Yes.</p> <p>20 Q. What is that?</p> <p>21 A. During my initial conversation with Ms. Forsythe</p> <p>22 she indicated that a witness was -- an individual was a</p> <p>23 witness not to the allegation of touching but to the</p> <p>24 nature of their relationship. And that she felt that</p> <p style="text-align: right;">Page 47</p>	<p>1 are alone at the time of the alleged physical sexual</p> <p>2 harassment, how can a claim be substantiated other than,</p> <p>3 based on your testimony, when a male alleged harasser</p> <p>4 admits to the unconsented touching?</p> <p>5 A. I'm sure there are several ways but one what</p> <p>6 somewhat readily available way to confirm that would be</p> <p>7 through CCTV footage. We have security cameras at all</p> <p>8 of our buildings and DVRs that record activities.</p> <p>9 Q. Did you have a CCTV with a view of the locations</p> <p>10 that Ms. Forsythe specified to you at the time she</p> <p>11 specified to you in the locations she specified to you?</p> <p>12 A. I would have had her complaint arrived earlier.</p> <p>13 Q. So is it say it takes -- the CCTV system, closed</p> <p>14 circuit system at Wayfair cover every inch of the</p> <p>15 offices?</p> <p>16 A. I have no knowledge of the CCTV system in Boston.</p> <p>17 Q. Do you have no knowledge of it in Paris?</p> <p>18 A. I do.</p> <p>19 Q. Does it cover every inch of the facility?</p> <p>20 A. No. But it did cover the area that she described</p> <p>21 the incident occurred.</p> <p>22 Q. Being what area?</p> <p>23 A. There is an open office area -- sort of difficult</p> <p>24 to describe -- but just off the warehouse floor.</p> <p style="text-align: right;">Page 49</p>

<p>1 Q. Are you saying there is no part of that open 2 office area that would not be reflective in a closed 3 television -- closed circuit television viewpoint? 4 A. No. I'm saying the area where she alleged the 5 incident occurred is covered by CCTV. 6 Q. When you say covered is that every inch of it? 7 A. Of the area that she described, yes. 8 Q. So in order for a female at Wayfair to have a 9 complaint of one consented substantiated it has to be on 10 film or the person has to admit it; is that what I'm 11 understanding? 12 MS. KAPPELMAN: Objection to form. 13 You can answer, Trevor. 14 A. No. I said that is one example. 15 Q. What is another example, sir? 16 A. Reporting the incident within a timely fashion. 17 Q. Well, you asked Ms. Forsythe whether she reported 18 the incident of unconsented touching to anyone? 19 A. Did I ask her that? 20 Q. Yes. 21 A. Yes, I did. 22 Q. Did you speak to that persons to whom she made 23 contemporaneous complaint of unconsented touching 24 whether or not they were at Wayfair or not?</p> <p style="text-align: right;">Page 50</p>	<p>1 You can answer, Trevor. 2 A. I'm not sure I understand. 3 Q. You didn't ask in August of 2019, after you got a 4 complaint among other things, physical sexual harassment 5 by Mr. McDole whether she complained to anyone at all 6 about the incidence unconsented touching, did you? 7 A. As I recall my question to her was: Did you 8 report this to anyone? 9 Q. By that you meant did you report it to anyone in 10 HR or chain of command, right? 11 MS. KAPPELMAN: I didn't -- that 12 mischaracterizes his testimony. He said, Did you report 13 anything to Wayfair. That's what he said. 14 BY MR. GOODMAN: 15 Q. Have you ever discussed or in your sexual 16 harassment training at Wayfair or elsewhere that 17 employees, whether or not a female, may be hesitant to 18 make complaints of physical harassment? 19 A. Yes. 20 Q. And is it appropriate in light of that to rule a 21 complaint of physical harassment unsubstantiated because 22 it is not on film or because the individual who 23 allegedly the harass the employee did not admit doing 24 so?</p> <p style="text-align: right;">Page 52</p>
<p>1 A. She didn't make one. 2 Q. She didn't tell you that she didn't make one to 3 anybody, did she? 4 A. I asked her during the course of the conversation 5 who she reported these allegations to and she said no 6 one until she sent the email to Matt Witte that launched 7 this investigation. 8 Q. Did you ask her who at Wayfair she reported to; 9 correct? 10 A. Yes. 11 Q. You didn't ask her who outside of Wayfair she 12 reported to, did you? 13 A. No. 14 Q. You know what the Me Too movement is; correct? 15 A. I'm familiar with it, yes. 16 Q. Have you conducted any sexual harassment 17 investigation since August and September 2018? 18 A. No, I have not. 19 Q. Why didn't you ask Ms. Forsythe in August or 20 September of 2019 whether she had made an individual 21 call it an outcry to anyone -- whether she had made an 22 outcry to anyone at the time of these alleged incidence 23 of unconsented touching? 24 MS. KAPPELMAN: Object to the form.</p> <p style="text-align: right;">Page 51</p>	<p>1 A. That is a bit of a hypothetical. 2 Q. Knowing that employees may hesitate claims of 3 physical harassment is it appropriate to tell them that 4 the complaint is not substantiated unless it is on film 5 or the harasser admits the act? 6 A. It could be. It would depend on the 7 circumstances. 8 Q. It could be appropriate? 9 A. Depending on the circumstance it could be 10 appropriate. 11 Q. Depending on what circumstances. What 12 circumstances would make telling a person that the claim 13 is unsubstantiated because it is not on TV or the 14 harasser doesn't admit it? 15 A. The absence of other evidence or information and 16 the credibility of the accused. 17 Q. Does HR -- did you ever tell Ms. Forsythe that 18 you did not find her credible? 19 A. Did I ever tell Ms. Forsythe that I did not find 20 her credible? 21 Q. Yes. 22 A. No, I did not. 23 Q. Why didn't you ask her whether anybody outside 24 Wayfair -- she had reported the unconsented touching to</p> <p style="text-align: right;">Page 53</p>

<p>1 anybody outside of Wayfair?</p> <p>2 A. I don't know that I ever asked anyone that</p> <p>3 question.</p> <p>4 Q. You have known for at least the last five years</p> <p>5 that one part of people being reluctant to report sexual</p> <p>6 harassment is that they are fear retaliation; correct?</p> <p>7 A. That is one reason people hesitate to report,</p> <p>8 yes.</p> <p>9 Q. But if they tell a family member or friend about</p> <p>10 being sexual harassed generally speaking a family member</p> <p>11 or friend does not have the power to effect them</p> <p>12 economically in the same way as an employer; correct?</p> <p>13 A. Okay. Yes.</p> <p>14 Q. When is the first time that you spoke with or met</p> <p>15 Ms. Forsythe?</p> <p>16 A. The first time I ever spoke with her was the</p> <p>17 first time I interviewed her regarding this</p> <p>18 investigation. I never met with her personally.</p> <p>19 Q. You never met her personally?</p> <p>20 A. Not that I'm aware of.</p> <p>21 Q. Is there any other employee at Wayfair who might</p> <p>22 have been separated during the course of dealings with</p> <p>23 you other than Ms. Forsythe who you never met?</p> <p>24 A. I'm sorry can you repeat the question.</p> <p style="text-align: right;">Page 54</p>	<p>1 instant messaging platform.</p> <p>2 Q. Besides the instances of termination for</p> <p>3 misconduct, and what other circumstances that you have</p> <p>4 not ever been in the same room or seen the employee who</p> <p>5 is separated?</p> <p>6 A. Layoffs or reductions in force.</p> <p>7 Q. Any other cases in which individuals made</p> <p>8 discrimination or retaliation complaints while they were</p> <p>9 separated without you ever meeting them?</p> <p>10 A. No. I never had anyone else resign during the</p> <p>11 course of an investigation or at the sum of an</p> <p>12 investigation, no.</p> <p>13 MR. GOODMAN: Object to responsiveness.</p> <p>14 BY MR. GOODMAN:</p> <p>15 Q. Why do you feel the need to adopt Mr. Berendt's</p> <p>16 language?</p> <p>17 MS. KAPPELMAN: Object. What did you just</p> <p>18 say?</p> <p>19 Q. Why do you feel to use language of resignation</p> <p>20 that you did not originate yourself?</p> <p>21 MS. KAPPELMAN: I'm going to direct you not</p> <p>22 to answer. Calls for the substance of communication</p> <p>23 that you had with inside counsel.</p> <p>24 BY MR. GOODMAN:</p> <p style="text-align: right;">Page 56</p>
<p>1 Q. Anybody else at Wayfair -- who was been separated</p> <p>2 from Wayfair while dealing with you about their</p> <p>3 employment who you never met?</p> <p>4 A. Yes.</p> <p>5 Q. How many occasions?</p> <p>6 A. A few, less than five.</p> <p>7 Q. Would those circumstances involve misconduct by</p> <p>8 the employee?</p> <p>9 A. Yes.</p> <p>10 Q. All of them?</p> <p>11 A. No.</p> <p>12 Q. The cases that involve misconduct, you have told</p> <p>13 of somebody's misconduct and saw their termination based</p> <p>14 on representations about that misconduct by others?</p> <p>15 A. I have been witnesses to separation for folks but</p> <p>16 I have not -- for associates that I have not met</p> <p>17 personally as a result of their conduct.</p> <p>18 Q. But in those cases were actually their</p> <p>19 terminations in person?</p> <p>20 A. I have witnessed in person separation and I have</p> <p>21 been present via video. So in-person and both remotely.</p> <p>22 Q. You have only had phone conversations and emails</p> <p>23 with Ms. Forsythe; correct?</p> <p>24 A. Yes, and conversations over Slack, which is an</p> <p style="text-align: right;">Page 55</p>	<p>1 Q. What advantage based on your HR experience did</p> <p>2 Wayfair gain by calling Ms. Forsythe's separation a</p> <p>3 resignation?</p> <p>4 MS. KAPPELMAN: Objection to the form of</p> <p>5 question.</p> <p>6 You can answer.</p> <p>7 A. What advantage did Wayfair gain by?</p> <p>8 Q. What advantage did it think was gaining by</p> <p>9 calling her separation a resignation on September 24,</p> <p>10 2019?</p> <p>11 MS. KAPPELMAN: Object to the form of</p> <p>12 question.</p> <p>13 You can answer, Trevor.</p> <p>14 A. Did accurately describe what happened?</p> <p>15 MR. GOODMAN: Object to form.</p> <p>16 Object to responsiveness.</p> <p>17 MS. KAPPELMAN: You can't just object</p> <p>18 because you don't like the testimony.</p> <p>19 That's not how it works.</p> <p>20 MR. GOODMAN: I can object to the</p> <p>21 responsiveness if I think it is correct.</p> <p>22 MS. KAPPELMAN: You really can't. You can't</p> <p>23 object if you don't agree with the testimony. That's</p> <p>24 not how it works. At least not in Massachusetts. Maybe</p> <p style="text-align: right;">Page 57</p>

<p>1 Texas you can.</p> <p>2 MR. GOODMAN: That's your characterization.</p> <p>3 BY MR. GOODMAN:</p> <p>4 Q. You didn't tell anybody between Thursday,</p> <p>5 September 19th and Tuesday, September 24th, that</p> <p>6 Ms. Forsythe told she that was resigning on Thursday,</p> <p>7 did you?</p> <p>8 MS. KAPPELMAN: Objection. Direct him not</p> <p>9 to answer only to the extent that there were</p> <p>10 conversations with counsel. If you had conversations</p> <p>11 with somebody outside or in-house counsel feel free to</p> <p>12 respond.</p> <p>13 A. There were others present but the conversation</p> <p>14 was with counsel.</p> <p>15 Q. You've already testified that it wasn't your --</p> <p>16 the idea did not originate with you so I will move on.</p> <p>17 MS. KAPPELMAN: Objection. He didn't</p> <p>18 testify to.</p> <p>19 A. I believe I testified that the communication did</p> <p>20 not come from me. I don't know that I have.</p> <p>21 MS. KAPPELMAN: I have your testimony.</p> <p>22 BY MR. GOODMAN:</p> <p>23 Q. You trying to retract it?</p> <p>24 MS. KAPPELMAN: He is not trying to retract</p> <p style="text-align: right;">Page 58</p>	<p>1 What words did you use?</p> <p>2 A. Her own.</p> <p>3 Q. She didn't use the word resign or quit, we've</p> <p>4 already talked to about that.</p> <p>5 What words of hers did you use to convey to</p> <p>6 Ms. Smith -- what words of hers did you convey to</p> <p>7 Ms. Smith?</p> <p>8 A. That she was requesting a severance package.</p> <p>9 Q. Did Ms. Forsythe express frustration to you that</p> <p>10 her situation at Wayfair seemed to offer -- strike that.</p> <p>11 When did you talk to Ms. Smith about it on</p> <p>12 Thursday?</p> <p>13 A. As soon as I hung up with Ms. Forsythe. I don't</p> <p>14 recall the exact time.</p> <p>15 Q. Did you communicate with Ms. Forsythe about your</p> <p>16 conversation with her on Thursday at any time on Friday?</p> <p>17 A. I had scheduled an appointment with her for</p> <p>18 Friday and that's why she communicated with me that she</p> <p>19 would be taking the day off.</p> <p>20 Q. You don't know why she communicated with you</p> <p>21 about why she was taking the day off, do you?</p> <p>22 MS. KAPPELMAN: Object to form.</p> <p>23 You can answer.</p> <p>24 A. She indicated she was stressed.</p> <p style="text-align: right;">Page 60</p>
<p>1 it. We will stand on his testimony.</p> <p>2 BY MR. GOODMAN:</p> <p>3 Q. Did the notion of characterizing Ms. Forsythe's</p> <p>4 separation as a resignation originate with you?</p> <p>5 MS. KAPPELMAN: Again, I'm going to direct</p> <p>6 him to answer to the extent that you are asking him for</p> <p>7 the substance of communications that he had with</p> <p>8 in-house or outside counsel which he has said are the</p> <p>9 only people he spoke to between Thursday and Monday</p> <p>10 about Ms. Forsythe.</p> <p>11 If that is not clear, I want to make it as</p> <p>12 clear as I can on the record about why I'm directing him</p> <p>13 not to answer.</p> <p>14 BY MR. GOODMAN:</p> <p>15 Q. When did you first talk with counsel about</p> <p>16 Ms. Forsythe after Thursday?</p> <p>17 A. After Thursday? I spoke to counsel on Thursday.</p> <p>18 Q. Okay. Prior to speaking counsel, did you tell</p> <p>19 anybody that your position was that Ms. Forsythe had a</p> <p>20 resigned in a conversation with you?</p> <p>21 A. Yes.</p> <p>22 Q. Who did you tell?</p> <p>23 A. Candice Smith.</p> <p>24 Q. All right. We are going to take her deposition.</p> <p style="text-align: right;">Page 59</p>	<p>1 Q. He didn't say, I'm taking a day off because you</p> <p>2 asked to talk to you, did she?</p> <p>3 A. No.</p> <p>4 Q. Did Ms. Smith -- who originated the idea of you</p> <p>5 talking to her on Friday?</p> <p>6 A. Who originated the idea of me to talking to whom.</p> <p>7 Q. To Ms. Forsythe on Friday?</p> <p>8 MS. KAPPELMAN: Again, if this is the</p> <p>9 substance of the counsel's communication with you, I'm</p> <p>10 directing you not answer.</p> <p>11 A. I can't answer the question.</p> <p>12 Q. Did you communicate with her on Saturday about</p> <p>13 your conversation with her on Thursday?</p> <p>14 MS. KAPPELMAN: Her meaning Ms. Forsythe.</p> <p>15 MR. GOODMAN: Ms. Forsythe.</p> <p>16 A. I don't recall speaking to her on Saturday.</p> <p>17 Q. Same question on Sunday.</p> <p>18 A. I don't recall speaking to her on Sunday.</p> <p>19 MS. KAPPELMAN: Ms. Forsythe on Sunday. I</p> <p>20 want the record to be clear.</p> <p>21 A. Sure.</p> <p>22 Q. Same question for Monday prior to your emails</p> <p>23 with her?</p> <p>24 MS. KAPPELMAN: Did you communicate with Ms.</p> <p style="text-align: right;">Page 61</p>

<p>1 approached her inappropriately?</p> <p>2 A. Ms. Forsythe indicated that Brittany Skaggs had</p> <p>3 made a comment about it appearing that the two of them</p> <p>4 were occasionally flirtatious with each other.</p> <p>5 Ms. Skaggs did not make an allegation against Mr.</p> <p>6 McDole.</p> <p>7 Q. That Mr. McDole being flirtatious with Ms. Skaggs</p> <p>8 or Ms. Forsythe?</p> <p>9 A. Ms. Forsythe.</p> <p>10 Q. Brittany Skaggs -- according to Ms. Forsythe,</p> <p>11 Brittany Skaggs had made a comment that Mr. McDole and</p> <p>12 Ms. Forsythe being flirtatious with one another.</p> <p>13 Is that your statement?</p> <p>14 A. According to Ms. Forsythe Brittany Skaggs had</p> <p>15 made a comment to Ms. Forsythe about the two of them</p> <p>16 appearing to quote, unquote like one another.</p> <p>17 Q. The two of them Ms. Forsythe and McDole?</p> <p>18 A. That's correct, yes.</p> <p>19 But Ms. Forsythe did not allege that Ms. Skaggs</p> <p>20 had been approached by Mr. McDole for clarification?</p> <p>21 Q. You clarified it.</p> <p>22 A. Okay.</p> <p>23 Q. And you claim to have discussed that Ms. Skaggs;</p> <p>24 correct?</p> <p style="text-align: right;">Page 66</p>	<p>1 A. Correct.</p> <p>2 Q. What were the matters that supposedly troubled</p> <p>3 her?</p> <p>4 A. She was approached by Ms. Forsythe regarding the</p> <p>5 payment of Mr. McDole's relocation money.</p> <p>6 And Ms. Forsythe alleged to the recruiter that Mr. McDole</p> <p>7 Was in violation of his transfer agreement, which would</p> <p>8 ordinarily trigger the clawback clause in the agreement.</p> <p>9 Q. Did he get a relocation bonus three months before</p> <p>10 he actually moved to California?</p> <p>11 A. I don't know the timeline off the top of my head.</p> <p>12 Q. Did you look into whether he got a relocation</p> <p>13 bonus months before he moved to California?</p> <p>14 A. I know that he received a relocation bonus I</p> <p>15 don't know -- not relocation bonus. That he received a</p> <p>16 relocation stipend. I don't know the timeline. I don't</p> <p>17 recall it.</p> <p>18 Q. Did you try to find out whether he had moved to</p> <p>19 California at the time that he received the relocation</p> <p>20 stipend?</p> <p>21 A. I knew that he was living in California at the</p> <p>22 time.</p> <p>23 MR. GOODMAN: Objection to responsiveness.</p> <p>24 BY MR. GOODMAN:</p> <p style="text-align: right;">Page 68</p>
<p>1 A. I did, yes.</p> <p>2 Q. When?</p> <p>3 A. I don't recall the date.</p> <p>4 Q. Who did you talk to about the claim of sexual</p> <p>5 harassment -- who did you talk about the August 13th</p> <p>6 complaint by Ms. Forsythe with besides Mr. McDole?</p> <p>7 A. Are you asking who the witnesses were?</p> <p>8 Q. Who did you spoke to? Who you spoke to after she</p> <p>9 made that formal complaint that complained that several</p> <p>10 instances of unconsented touching as well as other</p> <p>11 harassing behavior by Mr. McDole?</p> <p>12 A. Prior to the investigation formally beginning I</p> <p>13 spoke to Candice Smith, Matt Witte, Orian McKnight,</p> <p>14 Marcy Axelrad. And then during the course of the</p> <p>15 investigation, Mr. Berendt, Ms. Forsythe, Brittany</p> <p>16 Skaggs, James Lowe, Mr. McDole and a recruiter by the</p> <p>17 name of Stella. I apologize I forgot her last name.</p> <p>18 Q. Why did you speak with the recruiter?</p> <p>19 A. Following my conversation with Mr. McDole or</p> <p>20 during that conversation, he indicated that she had</p> <p>21 reached out to him because some of Ms. Forsythe's</p> <p>22 actions troubled her and they were in regards to</p> <p>23 Mr. McDole.</p> <p>24 Q. Was she an inhouse recruiter?</p> <p style="text-align: right;">Page 67</p>	<p>1 Q. Did you investigate whether he had moved his</p> <p>2 residence to California at the time that he received the</p> <p>3 relocation stipend?</p> <p>4 A. Yes.</p> <p>5 Q. What did you determine?</p> <p>6 A. He had not changed his physical address at the</p> <p>7 time which was not yet a violation of the agreement.</p> <p>8 Q. Did you share that detail with Ms. Forsythe?</p> <p>9 A. No. That matter had already been looked into</p> <p>10 prior to me hearing of it.</p> <p>11 Q. He had not gotten an apartment or house in</p> <p>12 California, is that what you are saying?</p> <p>13 A. I believe at the time he was at an extended stay</p> <p>14 facility.</p> <p>15 Q. Did you ask him whether he was or whether he was</p> <p>16 staying with his parents?</p> <p>17 A. When he communicated the information to me, he</p> <p>18 shared with me that he was staying at an extended stay</p> <p>19 in California.</p> <p>20 Q. Did you ask him whether he was staying with his</p> <p>21 parents after you got a relocation bonus?</p> <p>22 A. No, I did not.</p> <p>23 Q. If he wasn't in California, but got his</p> <p>24 relocation bonus before he moved to California, would</p> <p style="text-align: right;">Page 69</p>

<p>1 Ms. Forsythe be concerned that he was improperly 2 receiving a relocation bonus? 3 A. I can't speak to why she would be concerned. 4 Q. Did you ever ask her? 5 A. No. 6 Q. So Mr. McDole brought this up, you talked to 7 Stella about it but you never talked to Ms. Forsythe 8 about it? 9 A. No. As I said the matter had already been 10 resolved. 11 Q. How was it resolved? 12 A. This information was brought to me after the 13 after the fact. 14 Mr. McDole was speaking in terms of something 15 that happened in the past. So when I spoke to the 16 recruiter she forwarded me information that she had 17 escalated the situation to her manager. Because the 18 building that Mr. McDole was supposed to be permanently 19 assigned to the construction of it had been delayed, it 20 was deemed by recruiting that he was not in violation of 21 his agreement and that recruiting had already 22 communicated that to Ms. Forsythe. 23 Q. So but the deferral of the opening date of the 24 facility would have been problematic?</p> <p style="text-align: right;">Page 70</p>	<p>1 A. Not that I recall. 2 Q. What was his response to the question about 3 either behaving inappropriately? 4 A. As I recall, all of Mr. Lowe's responses were 5 essentially the same that the two of them appeared to 6 not get along. That he was not aware that either of 7 them was to blame, so to speak. 8 Q. Did you ask him what he thought about Mr. McDole? 9 A. What he thought about him? 10 Q. Yeah. In general terms. 11 A. No. 12 Q. Did you ask him why he believed Mr. McDole would 13 be in conflict with Ms. Forsythe? 14 A. I don't recall. 15 Q. Did you talk to Ms. Skaggs about? 16 A. Similar to Mr. Lowe the conversation began rather 17 broadly asking about their interactions and what she 18 witnessed. She indicated that again they appeared to 19 not to get along. 20 MS. KAPPELMAN: "They" McDole and Forsythe. 21 THE WITNESS: Yes. 22 Q. Anything else? 23 A. I asked her specifically about a comment that 24 Ms. Forsythe alleged that Ms. Skaggs made towards her.</p> <p style="text-align: right;">Page 72</p>
<p>1 A. Potentially. 2 Q. What did you talk to Mr. Lowe about? 3 A. What did I talk to who? 4 Q. What did you talk to Mr. Lowe about, Jim Lowe. 5 A. Ms. Forsythe listed him as a witness to a meeting 6 in which Mr. McDole had allegedly conducted himself 7 inappropriately by raising his voice towards Ms. 8 Forsythe. 9 Q. When did you speak with Mr. Lowe, approximately? 10 A. I don't recall the date, it was within a week to 11 perhaps ten days of initiating the investigation perhaps 12 a little longer. 13 Q. Did you speak to Mr. Lowe about anything else 14 besides that one meeting? 15 A. I asked in general terms what he knew about their 16 interactions. 17 Q. Anything else? 18 A. I asked him if either of them had ever behaved 19 inappropriately towards each other? 20 MR. GOODMAN: When you say each other, you 21 mean Ms. Forsythe and McDole; correct? 22 THE WITNESS: Correct. Apologies. 23 BY MR. GOODMAN: 24 Q. Anything else?</p> <p style="text-align: right;">Page 71</p>	<p>1 Q. Earlier about their being? 2 A. The comments from Ms. Forsythe was that Ms. 3 Skaggs had said to Ms. Forsythe, "I think he has a crush 4 on you." With regard to Mr. McDole. 5 Q. Did you quote with Ms. Skaggs? 6 A. I used the quote with Ms. Skaggs. 7 Q. Did she deny discussing Mr. McDole with 8 Ms. Forsythe? 9 A. No. 10 Q. What did she say she told Ms. Forsythe? 11 A. She indicated to me that she told Ms. Forsythe 12 that they acted like a couple who bickered. 13 Q. Anything else? 14 A. That they appeared not to get along with each 15 other and she was not aware of why that was. 16 Q. Who is Ms. Axelrad? 17 A. Marcy Axelrad is the director of talent 18 management for North America. Global director of talent 19 management. 20 Q. Is she above Ms. Smith? 21 A. Yes. 22 Q. In Ms. Forsythe's complaint there is an 23 allegation that I will to you read some or all of which 24 was part of her August 2019 complaint and ask you</p> <p style="text-align: right;">Page 73</p>



<p>1 whether you looked into this. It says, Between April 1, 2 2019 and August 13, 2019, McDole sent a series emails to 3 plaintiff seeking information that he knew that she did 4 not have in an aggressive manner and criticized her, 5 including emails that did not provide any new 6 information. 7 Did you look into that issue? 8 A. Yes. 9 Q. Did you verify that he sought information from 10 her? 11 A. I reviewed the emails that she was referring to. 12 Q. Did you inquire whether in fact she had the 13 information that he was requesting. 14 A. I don't recall. 15 Q. Is it appropriate for one employee -- did you 16 also look into text on April 11th in which Mr. McDole 17 complained to Ms. Forsythe that failed him as a leader 18 and was not a good person. 19 A. I don't recall seeing those text messages. 20 Q. Did you talk to Mr. Witte about his visiting with 21 Mr. McDole by telephone in April of 2019? 22 A. I'm sorry? Did I talk to Mr. Witte? 23 Q. Visiting by telephone with Mr. McDole on April 24 2019 after Ms. Forsythe complained about Mr. McDole's Page 74</p>	<p>1 Ms. Forsythe had been in template. 2 MS. KAPPELMAN: Object to form. 3 You can answer? 4 A. Mr. Witte had communicated to me that he 5 struggled with the way that the two of them communicated 6 with each other. 7 Q. So according to you, Mr. Witte never said 8 anything about -- specific about Mr. McDole's 9 communication to him, Mr. Witte about Emily? 10 A. I'm sorry, can you repeat the question. 11 Q. It is your testimony Mr. Witte never 12 characterized as inappropriate communications to him, 13 that is Mr. Witte, by Mr. McDole concerning Emily? 14 A. Did I did Mr. Witte ever complain about 15 communication from McDole to Witte? 16 Q. Yes. 17 A. Not that I recall. 18 Q. What details did Ms. Forsythe provide you about 19 the July 22, 2019, encounter at the Paris facility where 20 he touched her breast? 21 MS. KAPPELMAN: Object to the form of the 22 question. 23 Go ahead, Trevor. 24 A. So Ms. Forsythe indicated to me that she and Page 76</p>
<p>1 aggressive email and suggested they discuss or 2 communicate the issue. 3 A. I don't remember. 4 Q. Mr. Witte did not tell you about the temperament 5 that was exhibited by Mr. McDole in a telephone call in 6 April 2019 during your investigation? 7 A. I don't remember that issue coming up. 8 Q. Did you ever ask Mr. Witte what he thought of the 9 temperament or stability of Mr. McDole based on the 10 August 14, 2019, complaint? 11 A. No. 12 Q. Did you talk to Mr. McDole about a meeting with 13 -- did you talk with Mr. Witte about a meeting with Mr. 14 McDole on May 1, 2019 after the August 14, 2019 15 complaint was made? 16 MS. KAPPELMAN: Objection to form of the 17 question. I think the question is: Did you talk -- 18 after you got the investigation, did you talk to Witte 19 about a May 1st meeting. 20 A. I believe so but I don't remember the dates of 21 the meeting what we discussed, so it is possible. 22 Q. You understood from the August complaint of Ms. 23 Forsythe that Mr. Witte had told Ms. Forsythe that he 24 knew Mr. McDole's communications with her with him about Page 75</p>	<p>1 Mr. McDole were meeting in the open office area. I 2 don't recall what they were discussing. I don't know 3 that she even shared with me the specifics, it was a 4 work-related conversation. She alleged at the end of 5 that conversation Mr. McDole stood and reached towards 6 -- when we were discussing it over the phone she 7 indicated that Mr. McDole reached towards her shirt and 8 touched her shirt on her chest. 9 When that conversation concluded I then 10 received an email where she clarified that what she 11 meant to say was not that he touched her shirt but that 12 he actually touched -- I'm going to quote her because I 13 feel it is appropriate -- she said that he touched her 14 boob. 15 Q. So after you had those two communications you 16 understood that he put his hand between her breasts; 17 correct? 18 MS. KAPPELMAN: Object to the form of the 19 question. 20 You can answer, Trevor. 21 A. I understood based on her email to me, she 22 alleged that he touched her breast. 23 Q. Plural or singular? 24 A. I don't recall if she said boob or boobs. I just Page 77</p>

<p>1 remember the use of the word.</p> <p>2 Q. Did she describe what he did after he did that to</p> <p>3 her?</p> <p>4 A. No, she did not.</p> <p>5 Q. She told you what she was wearing, correct?</p> <p>6 A. She indicated it was a shirt with some sort of</p> <p>7 dots, perhaps pokkadots.</p> <p>8 Q. You talked to Mr. McDole about that incident?</p> <p>9 A. I talked to him about that alleged accident,</p> <p>10 correct.</p> <p>11 Q. Was there any detail that Ms. Forsythe conveyed</p> <p>12 to you about that incident that you did not convey to</p> <p>13 Mr. McDole in getting him to respond to you?</p> <p>14 A. I don't believe I used the exact words that she</p> <p>15 used. Other than that I asked him if he had any</p> <p>16 physical contact with her in that meeting and he denied</p> <p>17 that. I said, "So you never touched her on her chest?</p> <p>18 Under her shirt? Around her shirt?"</p> <p>19 He said, "No." He never physically touched her</p> <p>20 during that meeting.</p> <p>21 Q. Did you tell her what she had said about him</p> <p>22 touching her shirt and -- touching her shirt on one of</p> <p>23 the spots on the shirt?</p> <p>24 A. Yes.</p> <p style="text-align: right;">Page 78</p>	<p>1 broadly had he ever had any inappropriate physical</p> <p>2 contact with Ms. Forsythe.</p> <p>3 Q. Did you discuss -- did you ask Mr. McDole whether</p> <p>4 he ever discussed internet dating applications with</p> <p>5 Ms. Forsythe?</p> <p>6 A. I believe so, yes.</p> <p>7 Q. What was his answer?</p> <p>8 A. I don't recall. I believe he said that they</p> <p>9 joked about it.</p> <p>10 Q. Did you ever ask whether he speculated about the</p> <p>11 possibility of him and Plaintiff dating in July of 2019?</p> <p>12 A. Yes.</p> <p>13 Q. What was his answer?</p> <p>14 A. He denied that allegation.</p> <p>15 Q. Did you ever ask him whether he had invited</p> <p>16 plaintiff to spend any part of the day with him in July</p> <p>17 of 2019?</p> <p>18 A. Yes.</p> <p>19 Q. What was his answer?</p> <p>20 A. That they had invited each other to lunch from</p> <p>21 time to time when they were both in the same location</p> <p>22 and that they did go on a walk while during her visit.</p> <p>23 MR. GOODMAN: Objection to responsiveness.</p> <p>24 Q. I'm asking about July of 2019.</p> <p style="text-align: right;">Page 80</p>
<p>1 Q. Did you ask him if he engaged in any questionable</p> <p>2 conduct after he walked away from her on that occasion?</p> <p>3 Did you ask about any other conduct after walking away</p> <p>4 from him?</p> <p>5 MS. KAPPELMAN: You are screwing around with</p> <p>6 your pronouns a little bit. You are saying her's</p> <p>7 instead of him's. It is a little confusing with the</p> <p>8 questions.</p> <p>9 Q. Did you ask McDole about any other conduct on his</p> <p>10 part that could have been seen as inappropriate after he</p> <p>11 walked with away from Ms. Forsythe on that occasion?</p> <p>12 A. No. I asked him if he had any physically</p> <p>13 inappropriate contact with her and he said, No, I didn't</p> <p>14 apply a timeframe.</p> <p>15 Q. You didn't ask -- did you ask him specifically</p> <p>16 about the January and March events in Boston and Paris?</p> <p>17 A. Yes.</p> <p>18 Q. Or just the general question that you just</p> <p>19 stated?</p> <p>20 A. Both.</p> <p>21 Q. Did you ask him about those two events did you</p> <p>22 ask about those events before you got to the July event?</p> <p>23 A. I don't recall. I asked about the instances as</p> <p>24 they had been reported to me specifically. Then I asked</p> <p style="text-align: right;">Page 79</p>	<p>1 Did ask you him about inviting Plaintiff to spend</p> <p>2 time with him during the afternoon and dinner at any</p> <p>3 time in July 2019?</p> <p>4 MS. KAPPELMAN: Can I stop you. Not did he</p> <p>5 ask in July but did Trevor Shaffer ask McDole about an</p> <p>6 incident that may have occurred in July, is that what</p> <p>7 you are asking about.</p> <p>8 MR. GOODMAN: The latter is fine, yes.</p> <p>9 A. I'm sorry. Did ask McDole about?</p> <p>10 Q. Him asking Emily to spend the afternoon and go to</p> <p>11 dinner with him in July of 2019?</p> <p>12 A. Yes, I did ask that.</p> <p>13 Q. What was his answer?</p> <p>14 A. That he did not do that.</p> <p>15 Q. Did you ever ask Mr. McDole about him telling</p> <p>16 anybody that he and Ms. Forsythe were dating?</p> <p>17 A. I'm sorry can you repeat the question.</p> <p>18 Q. Did you ever ask Mr. McDole whether at any time</p> <p>19 he told individuals, told others, that he and Emily were</p> <p>20 dating?</p> <p>21 A. No.</p> <p>22 Q. Did Ms. Forsythe complain at the beginning of</p> <p>23 August of the continually aggressive email by McDole to</p> <p>24 her and about her?</p> <p style="text-align: right;">Page 81</p>

<p>1 A. She complained about emails from Mr. McDole, yes.</p> <p>2 Q. Did you do anything or -- did you or Mr. Witte or</p> <p>3 Mr. McKnight do anything to stop that?</p> <p>4 A. Yes.</p> <p>5 Q. What did you do to stop it?</p> <p>6 A. My recommendation following the investigation was</p> <p>7 that there would be a conversation from each of their</p> <p>8 respective leaders about how they should communicate</p> <p>9 with one another.</p> <p>10 Q. That was after August 13th and that was after the</p> <p>11 formal complaint was made, correct?</p> <p>12 A. Correct.</p> <p>13 Q. Prior to that, did you or Mr. Witte or Mr.</p> <p>14 McKnight do anything to remedy the continuing complaints</p> <p>15 by Ms. Forsythe about emails directed to and about her</p> <p>16 by Mr. McDole?</p> <p>17 MS. KAPPELMAN: I think object to form. I</p> <p>18 think you know that Bob from the testimony today that</p> <p>19 Mr. Shaffer-Figueroa didn't ever speak to Ms. Forsythe</p> <p>20 until after her August complaint, right?</p> <p>21 THE WITNESS: That's correct.</p> <p>22 Q. You may know the answer without having been</p> <p>23 involved, do you know if -- I will restate it without</p> <p>24 reference to you. Did Mr. Witte or Mr. McKnight ever do</p> <p style="text-align: right;">Page 82</p>	<p>1 A. Ms. Forsythe resigned her employment prior to</p> <p>2 being able to those issues.</p> <p>3 MR. GOODMAN: Object to the responsiveness.</p> <p>4 BY MR. GOODMAN:</p> <p>5 Q. You are not aware of any action by Witte or</p> <p>6 McKnight to remedy the problem with aggressive emails by</p> <p>7 McDole at any time, are you?</p> <p>8 MS. KAPPELMAN: Object to form of the</p> <p>9 question. Assumes facts not in evidence.</p> <p>10 You can answer, Trevor.</p> <p>11 A. I don't know that emails between the two of them</p> <p>12 were ever described as aggressive by anyone but</p> <p>13 Ms. Forsythe</p> <p>14 Again, there was conversation between myself, Mr.</p> <p>15 McKnight, Mr. Witte about and Mr. Davis, who is the</p> <p>16 person who at the time Mr. McDole reported to about</p> <p>17 having communication with them about the way they</p> <p>18 communicated with one another.</p> <p>19 And at that time when I made that recommendation</p> <p>20 Mr. Witte and McKnight revealed to me that they had</p> <p>21 concern about the way that Ms. Forsythe communicated in</p> <p>22 writing in general</p> <p>23 Q. You can't communicate with any of them about</p> <p>24 allegedly aggressive emails from McKnight to Ms.</p> <p style="text-align: right;">Page 84</p>
<p>1 anything to remedy the complaints by Ms. Forsythe even</p> <p>2 before August 14th continuing aggressive emails about</p> <p>3 her and to her from McDole?</p> <p>4 MS. KAPPELMAN: Objection to the form of the</p> <p>5 question. Assumes facts not in evidence. You can</p> <p>6 answer, Trevor.</p> <p>7 A. The only conversations I'm aware of between Mr.</p> <p>8 Witte and Mr. McDole towards Ms. Forsythe with regard to</p> <p>9 emails were in reference to her own emails and her own</p> <p>10 style of communications that they had received</p> <p>11 complaints about.</p> <p>12 Q. You aware of complaints by Ms. Forsythe about</p> <p>13 emails of McDole prior to -- you became aware after</p> <p>14 August 14th of complaints by Ms. Forsythe of emails by</p> <p>15 Mr. McDole; correct?</p> <p>16 A. I became aware after her August complaint,</p> <p>17 correct.</p> <p>18 Q. You are not aware as a result of investigating</p> <p>19 that or in any other way aware of any action taken by</p> <p>20 Witte or McKnight to remedy that complaint by</p> <p>21 Ms. Forsythe; is that correct?</p> <p>22 MS. KAPPELMAN: Object to the form. Object</p> <p>23 to the form.</p> <p>24 Trevor, you can answer.</p> <p style="text-align: right;">Page 83</p>	<p>1 Forsythe; is that correct?</p> <p>2 MS. KAPPELMAN: I think you just said</p> <p>3 McKnight to Ms. Forsythe. Is that what you meant?</p> <p>4 MR. GOODMAN: Let me restate it.</p> <p>5 BY MR. GOODMAN:</p> <p>6 Q. You didn't communicate with McKnight or Witte or</p> <p>7 Davis about aggressive emails from McDole to or about</p> <p>8 Emily Forsythe; correct?</p> <p>9 A. I communicated with all of those people about the</p> <p>10 style of communication. I did not describe it as</p> <p>11 aggressive.</p> <p>12 Q. Did that include emails from Mr. McDole to or</p> <p>13 about to Emily Forsythe?</p> <p>14 A. Yes.</p> <p>15 Q. Did you ever tell Mr. McDole that?</p> <p>16 A. Yes.</p> <p>17 Q. When did -- you told Mr. McDole that he should</p> <p>18 change his means of communicating with Ms. Forsythe?</p> <p>19 A. No.</p> <p>20 Q. What did you tell him Mr. McDole?</p> <p>21 A. That following the resolution of the</p> <p>22 investigation for which he was the accused there would</p> <p>23 be conversation about his communication style.</p> <p>24 Q. When did you tell him that?</p> <p style="text-align: right;">Page 85</p>

<p>1 A. I don't recall the exact date.</p> <p>2 Q. Was it on or before September 24, 2019?</p> <p>3 A. It would have been before.</p> <p>4 Q. You never actually did that?</p> <p>5 MS. KAPPELMAN: Objection.</p> <p>6 What was the question.</p> <p>7 BY MR. GOODMAN:</p> <p>8 Q. Did you never actually did that, did you?</p> <p>9 MS. KAPPELMAN: Did what?</p> <p>10 BY MR. GOODMAN:</p> <p>11 Q. Talk to Mr. McDole about his style of</p> <p>12 communication?</p> <p>13 MS. KAPPELMAN: Objection. Asked and</p> <p>14 answered. You can answer again.</p> <p>15 A. I was never going to be the person who was going</p> <p>16 to have that conversation with him. I was going to</p> <p>17 facilitate that conversation between his leader and</p> <p>18 himself.</p> <p>19 Q. But you are not aware that that ever happened,</p> <p>20 are you?</p> <p>21 A. I'm aware that that did not occur.</p> <p>22 Q. Did you ever ask Mr. McKnight about his</p> <p>23 references and conversations with --</p> <p>24 A. Can you repeat the question. I didn't hear.</p> <p style="text-align: right;">Page 86</p>	<p>1 them?</p> <p>2 A. No. None of us were in the same room. It was</p> <p>3 all via a video call.</p> <p>4 Q. You didn't talk to Mr. Stark about anything else,</p> <p>5 either?</p> <p>6 A. No.</p> <p>7 Q. What did you talk to Mr. Witte about after you</p> <p>8 got the complaint?</p> <p>9 A. After I received the complaint?</p> <p>10 Q. Yes.</p> <p>11 A. I informed him that I would be conducting an</p> <p>12 investigation and then I informed him of my findings</p> <p>13 following that investigation?</p> <p>14 Q. Did you talk about any other aspect of the</p> <p>15 complaint other than those?</p> <p>16 A. Not that I recall.</p> <p>17 Q. So did you notify Mr. Witte on the same date that</p> <p>18 you received that formal complaint from Ms. Forsythe?</p> <p>19 A. Did I speak to Mr. Witte, the day that</p> <p>20 he received the complaint?</p> <p>21 Q. Right?</p> <p>22 A. No, I did not.</p> <p>23 Q. You spoke to him several days later and told him</p> <p>24 you were going to be investigating it and then later</p> <p style="text-align: right;">Page 88</p>
<p>1 Q. Did you ever ask Mr. McKnight about him making</p> <p>2 any reference in a conversation with Ms. Forsythe to</p> <p>3 three colleagues at Walmart a former employer?</p> <p>4 A. No, I'm not aware of that.</p> <p>5 Q. What did talk to Mr. McKnight about after you got</p> <p>6 the complaint of discrimination from Ms. Forsythe?</p> <p>7 A. With Mr. McKnight?</p> <p>8 Q. Yes.</p> <p>9 A. I informed him upon receiving the complaint that</p> <p>10 I would be conducting an investigation. And I informed</p> <p>11 him when that investigation was concluded what my</p> <p>12 findings were.</p> <p>13 Q. You didn't communicate with him about it in any</p> <p>14 other way?</p> <p>15 A. I'm sorry?</p> <p>16 Q. Did you not communicate with Mr. McKnight about</p> <p>17 her complaint in any other way?</p> <p>18 A. Not that I recall, no.</p> <p>19 Q. What about Mr. Stark, did you communicate to</p> <p>20 Mr. Stark in any way?</p> <p>21 A. Chris Stark. Yes, I believe Mr. Stark was</p> <p>22 present when I shared my findings with Mr. McKnight and</p> <p>23 Mr. Witte and Ms. Smith.</p> <p>24 Q. When you present were you in the same room as</p> <p style="text-align: right;">Page 87</p>	<p>1 told him that you had concluded it; correct?</p> <p>2 A. Yes.</p> <p>3 Q. You did not discuss the complaint with him?</p> <p>4 A. No.</p> <p>5 Q. Did anybody assist you in the investigation of</p> <p>6 the August 14th complaint?</p> <p>7 A. No.</p> <p>8 Q. I take you communicated the fact that you were</p> <p>9 going to investigate the complaint around the same time</p> <p>10 to Candice Smith, Witte, McKnight and Axelrad?</p> <p>11 A. So I did not make the decision to communicate to</p> <p>12 Candice. Candice assigned the investigation to me.</p> <p>13 Q. Yes told Mr. Witte and Mr. McKnight and Ms.</p> <p>14 Axelrad that you were going to investigate the</p> <p>15 complaint; correct?</p> <p>16 A. I don't believe Ms. Axelrad was present when I</p> <p>17 said I be conducting an investigation. But the other</p> <p>18 names are correct.</p> <p>19 Q. But you never talked to Witte and McKnight again</p> <p>20 about the complaint until you concluded it?</p> <p>21 A. I believe there were some emails following up</p> <p>22 just letting them how the investigation was progressing.</p> <p>23 I let them know the timeline. I did not share content</p> <p>24 or context. I share with them, I have one witness to</p> <p style="text-align: right;">Page 89</p>

<p>1 speak to before I resolve it, that sort of them just to</p> <p>2 keep them abreast of my progress.</p> <p>3 Q. Mr. Witte, were encounters between Ms. Forsythe</p> <p>4 and Witte referred to in the August 14th complaint?</p> <p>5 MS. KAPPELMAN: Object to form.</p> <p>6 What was that question.</p> <p>7 BY MR. GOODMAN:</p> <p>8 Q. Were encounters between Ms. Forsythe and Mr.</p> <p>9 Witte referred to in the August 14th complaint?</p> <p>10 A. Not that I recall.</p> <p>11 Q. Were encounters between Mr. McDole and Mr. Witte</p> <p>12 referred to in the August 14th complaint?</p> <p>13 A. Not that I recall.</p> <p>14 Q. Did you ever talk to Mr. Lowe --</p> <p>15 MS. KAPPELMAN: Objection. Asked and</p> <p>16 answered.</p> <p>17 MR. GOODMAN: You don't even know what I'm</p> <p>18 going to ask.</p> <p>19 MS. KAPPELMAN: I thought that was the</p> <p>20 question.</p> <p>21 MR. GOODMAN: No, that was not the question.</p> <p>22 MS. KAPPELMAN: Okay.</p> <p>23 BY MR. GOODMAN:</p> <p>24 Q. Did you ever talk to Mr. Lowe about his -- any</p> <p style="text-align: right;">Page 90</p>	<p>1 into a meeting even though he wanted to participate;</p> <p>2 correct?</p> <p>3 A. Yes.</p> <p>4 Q. Did you ask who the other participants were</p> <p>5 besides him and Ms. Forsythe that were present at the</p> <p>6 time?</p> <p>7 A. I don't recall asking him that question.</p> <p>8 Q. Well, if you had asked that question and gotten</p> <p>9 an answer, you perhaps could have verified whether what</p> <p>10 she was telling you was true; correct?</p> <p>11 MS. KAPPELMAN: Object to form.</p> <p>12 You can answer, Trevor.</p> <p>13 A. I didn't say I didn't ask the question. I said I</p> <p>14 don't remember asking it.</p> <p>15 Q. Do you remember any talking to any of the other</p> <p>16 participants in the meeting about that meeting?</p> <p>17 A. Jim Lowe.</p> <p>18 Q. Anybody else?</p> <p>19 A. No.</p> <p>20 Q. Did Mr. Lowe respond to your question whether --</p> <p>21 did you ask Mr. McDole whether -- did you ask Mr. Lowe</p> <p>22 whether Mr. McDole left the meeting early?</p> <p>23 A. I don't recall asking that question.</p> <p>24 Q. Did you ask Mr. Lowe any question about that</p> <p style="text-align: right;">Page 92</p>
<p>1 statement he made to Emily Forsythe about Mr. McDole?</p> <p>2 MS. KAPPELMAN: Asked and answered. You can</p> <p>3 answer again, Trevor.</p> <p>4 A. Did I ask Mr. Lowe about statements that he made</p> <p>5 about Mr. McDole?</p> <p>6 Q. Yes.</p> <p>7 A. No.</p> <p>8 Q. Did you talk with Mr. McDole about his going into</p> <p>9 a meeting in August of 2019 without being invited?</p> <p>10 A. I asked him about going into a meeting on</p> <p>11 August 14th, yes.</p> <p>12 Q. What did he say?</p> <p>13 A. That he was present during the meeting.</p> <p>14 Q. Did he say whether he left early in the meeting?</p> <p>15 A. I don't recall.</p> <p>16 Q. Did you ask him who the other participants of the</p> <p>17 meeting were?</p> <p>18 A. I don't recall.</p> <p>19 Q. You knew that Ms. Forsythe was planning that he</p> <p>20 has not invited to participate in it but sat down in the</p> <p>21 meeting and then left while others waited for him to</p> <p>22 leave, correct?</p> <p>23 A. Can you repeat the question.</p> <p>24 Q. You knew that she was complaining that he came</p> <p style="text-align: right;">Page 91</p>	<p>1 meeting?</p> <p>2 A. Yes.</p> <p>3 Q. What was the question?</p> <p>4 A. I recall asking him to describe the meeting and</p> <p>5 what happened during that meeting.</p> <p>6 Q. What did he tell you?</p> <p>7 A. That the two of them that -- Mr. McDole and.</p> <p>8 Ms. Forsythe became argumentative with one another.</p> <p>9 Q. Did you ask him whether Mr. McDole left the</p> <p>10 meeting early again?</p> <p>11 A. I don't recall him asking that question.</p> <p>12 Q. But he claimed that they were argumentative at</p> <p>13 the meeting that Ms. Forsythe was complaining about?</p> <p>14 A. Yes.</p> <p>15 Q. Did you ask him whether Mr. McDole belonged in</p> <p>16 the meeting?</p> <p>17 A. Did I ask Mr. Lowe if Mr McDole belonged in the</p> <p>18 meeting?</p> <p>19 Q. Right.</p> <p>20 A. No, I did not.</p> <p>21 Q. You understood from Ms. Forsythe was that one of</p> <p>22 her complaints was that Mr. McDole put himself in a</p> <p>23 meeting without being invited to it; correct?</p> <p>24 A. Yes.</p> <p style="text-align: right;">Page 93</p>

<p>1 Q. You never asked Mr. Lowe the question whether to 2 verify that; correct?</p> <p>3 A. I didn't need to ask the question.</p> <p>4 Q. Why not?</p> <p>5 A. Because Mr. Lowe stated that Mr. McDole joined 6 the meeting.</p> <p>7 Q. But you didn't Mr. Lowe if Mr. McDole joined the 8 meeting because he was expected or invited to be there, 9 did you?</p> <p>10 A. No. Again I didn't need to.</p> <p>11 Q. You knew one of the complaints of Ms. Forsythe is 12 that he was in the meeting without being invited; 13 correct?</p> <p>14 A. That is what Ms. Forsythe told me, yes. That is 15 also what Mr. Lowe told me when I asked him to describe 16 the meeting?</p> <p>17 Q. He also told you that Mr. McDole was not invited 18 into the meeting?</p> <p>19 A. Yes.</p> <p>20 Q. But you didn't ask whether Mr. McDole left a 21 meeting he wasn't invited to?</p> <p>22 A. No. Not that I recall.</p> <p>23 Q. Is there any reason that you told Ms. Forsythe 24 that her sexual harassment complaint against Mr. McDole</p> <p style="text-align: right;">Page 94</p>	<p>1 her sexual harassment complaint was not going anywhere 2 that she can have a conversation with others to improve 3 the work relationship between her and Mr. McDole; 4 correct?</p> <p>5 MS. KAPPELMAN: Object to the form of the 6 question and the characterization of not going anywhere.</p> <p>7 You can answer, Trevor.</p> <p>8 A. I informed her my recommendation was for she and 9 her respective leaders and Mr. McDole and his to get 10 together to discuss how they could communicate more 11 effectively moving forward?</p> <p>12 Q. Did she ask you whether there were any other 13 options available to address the issue?</p> <p>14 A. To address what.</p> <p>15 Q. To address the fact that she had made a sexual 16 harassment complaint against her employee who was not 17 willing -- who was not going to do anything?</p> <p>18 A. I don't recall her asking for other options, no.</p> <p>19 Q. Did Ms. Forsythe complain at any point about Mr. 20 McKnight excluding her from communication with others in 21 the group?</p> <p>22 A. I recall that complaint. I don't recall the time 23 frame of it. I believe it came after the initial 24 complaint was received.</p> <p style="text-align: right;">Page 96</p>
<p>1 was unfounded except for his denial?</p> <p>2 MS. KAPPELMAN: Object to the form of the 3 question.</p> <p>4 If you understand it, Trevor, go ahead and 5 answer it.</p> <p>6 A. I believe I do.</p> <p>7 I never told Ms. Forsythe that her allegations 8 were unfounded. I said I was unable to substantiate her 9 allegations.</p> <p>10 Q. Did you not use the word unfounded?</p> <p>11 A. I don't believe so.</p> <p>12 Q. You are not denying that, but you can't remember 13 using that word; is that what I understand?</p> <p>14 A. I don't recall telling her that her allegations 15 were unfounded.</p> <p>16 Q. You told her when you advised her of the 17 resolution of the complaint that you referred to a 18 conversation between and her and McDole and Mr. Witte 19 among others; correct?</p> <p>20 MS. KAPPELMAN: I didn't hear the question. 21 If somebody else got it you can read it back.</p> <p>22 What is the question, Bob?</p> <p>23 BY MR. GOODMAN:</p> <p>24 Q. You also told Ms. Forsythe when you told her that</p> <p style="text-align: right;">Page 95</p>	<p>1 Q. Did you ask Mr. McKnight to address it?</p> <p>2 A. When she made the retaliation claim I spoke to 3 Mr. McKnight about that allegation.</p> <p>4 Q. Did Mr. McKnight inform you prior to September 5 19th that Emily had complained to him about being 6 excluded from communications within his group?</p> <p>7 A. Did Mr. Mr. McKnight reveal that to me?</p> <p>8 Q. Yeah.</p> <p>9 A. It was discussed. I don't know if it was me that 10 initiated that topic or it was him.</p> <p>11 Q. Isn't that something he himself disclosed that a 12 complaint was made that he was excluding her from 13 communications under the circumstances?</p> <p>14 MS. KAPPELMAN: Objection form of question. 15 You can answer, Trevor.</p> <p>16 A. Is that something that he should have brought up 17 to me?</p> <p>18 Q. Right. That in the wake of a sexual harassment 19 investigation he was complaining that he was excluding 20 her from communications, you know, in going around her 21 in his communications, yes?</p> <p>22 MS. KAPPELMAN: Object to the form of the 23 question.</p> <p>24 You can answer, Trevor.</p> <p style="text-align: right;">Page 97</p>

<p>1 A. As to whether the should or should not, I would 2 think it should, yes. He did discuss it with me. I 3 don't remember if I initiated it or if he did. 4 Q. It is your testimony that discussed it with you 5 before the retaliation complaint or only after the 6 retaliation complaint was made? 7 A. I believe it was during the conversation about 8 the retaliation complaint when I interviewed him. 9 THE VIDEOGRAPHER: This is the videographer, 10 can we go off the record. 11 MR. GOODMAN: Yes. 12 THE VIDEOGRAPHER: The time is 1:20 p.m. 0 13 Eastern time. We are going off the record. This is 14 media two. 15 (Break in the proceedings.) 16 THE VIDEOGRAPHER: Back on the record. The 17 time is 1:44 p.m. Eastern time. This is the beginning 0 18 of media file number three. 19 BY MR. GOODMAN: 20 Q. What was the retaliation claim by Ms. Forsythe. 21 A. I'm sorry? 22 Q. What was the substance of the retaliation come by 23 Ms. Forsythe? 24 A. Ms. Forsythe indicated that Mr. McKnight had</p> <p style="text-align: right;">Page 98</p>	<p>1 Q. What did you say and what did he say in response? 2 A. I asked him to describe the conversation that she 3 had described to me. He shared that he was voicing some 4 frustrations around the way that he communicated. 5 At one point he described her as becoming very 6 loud. And he communicated to her that this quote, 7 unquote, this wasn't working and that he wanted to get 8 HR involved. 9 Q. She told you that he said he was already working 10 with human resources to remove her from the position; 11 correct? 12 MS. KAPPELMAN: Objection to form. 13 You can answer. 14 A. That is what she alleged, yes. 15 Q. Did you communicate that specific allegation to 16 Mr. McKnight when you spoke to him? 17 A. Yes. 18 Q. He acknowledged that he said I'm already started 19 working with HR representatives? 20 A. No, he did not. 21 Q. Did you make any effort to verify with any HR 22 representatives that he had started to work with others 23 to remove her from that position? 24 A. I personally did not, no.</p> <p style="text-align: right;">Page 100</p>
<p>1 informed her that he didn't want her on his team was the 2 allegation from Ms. Forsythe. 3 Q. Did she call you directly you about it? 4 A. No. 5 Q. How did she make the complaint? 6 A. Email. 7 Q. To who? 8 A. I'm sorry? 9 Q. Email to who? 10 A. I don't remember the entire distribution. But I 11 believe it went to Mr. Witte myself and Ms. Smith. 12 There could have been others. 13 Q. Okay. We talked about the complaint of 14 retaliation, as I understood your testimony, the 15 complaint was September 17, 2019 -- September 19, 2019, 16 the Thursday before her separation? 17 A. I believe the email that she sent may have been 18 sent on Tuesday or Wednesday. But I don't recall the 19 exact time frame. 20 Q. Did you talk to Mr. Witte about her complaint of 21 retaliation? 22 A. I don't recall. I don't recall. 23 Q. Did you talk to Mr. McKnight about it? 24 A. I did, yes.</p> <p style="text-align: right;">Page 99</p>	<p>1 Q. Did you ask anybody on your term to talk to other 2 HR representatives to verify whether Mr. McKnight 3 responded to them? 4 A. I did not ask anyone to speak to other 5 professionals, no. 6 Q. Nobody tried to verify the allegation of who told 7 who was already working with other HR representatives? 8 MS. KAPPELMAN: Object to the form of the 9 question. 10 You can answer again, Trevor. 11 A. That's not what I'm stating. 12 Q. Who tried to verify the allegation by 13 Ms. Forsythe that Mr. McKnight had told her that he was 14 already working with other HR representatives to remove 15 her? 16 A. I don't know who attempted to verify. I do know 17 that I spoke to Candice Smith about the allegation 18 itself. 19 Q. Did Mr. McKnight -- did Emily identify Candice 20 Smith as somebody who McKnight was working already 21 working with? 22 A. Ms. Forsythe did not share who Mr. McKnight said 23 he talked to. 24 Q. Do you know if Ms. Smith talked to anybody else</p> <p style="text-align: right;">Page 101</p>

<p>1 who might have verified her allegation?</p> <p>2 A. I don't know that she spoke to anyone to verify</p> <p>3 the allegation.</p> <p>4 Q. As far as you know that was an allegation that</p> <p>5 was made that was never followed up on to determined</p> <p>6 whether it was true or false; right?</p> <p>7 MS. KAPPELMAN: Objection to the form of the</p> <p>8 question.</p> <p>9 You can answer, Trevor?</p> <p>10 A. No. I asked Ms. Smith if we were working to</p> <p>11 remove or if anyone was working to remove Ms. Forsythe</p> <p>12 and her he answer was no.</p> <p>13 Q. If it hadn't come up to her level she wouldn't</p> <p>14 know, right?</p> <p>15 A. I have no idea what she would know and what she</p> <p>16 wouldn't know.</p> <p>17 Q. If it hadn't come to her level, she wouldn't</p> <p>18 know; right?</p> <p>19 MS. KAPPELMAN: Asked and answered.</p> <p>20 You answer again, Trevor.</p> <p>21 A. Not necessary.</p> <p>22 Q. You just asked her whether she knew that</p> <p>23 happened, right?</p> <p>24 A. I asked her if she was aware that we were</p> <p style="text-align: right;">Page 102</p>	<p>1 in order to remove her from that position, was it?</p> <p>2 MS. KAPPELMAN: Object to form.</p> <p>3 You can answer again, Trevor.</p> <p>4 A. Can you repeat the question?</p> <p>5 Q. There is nothing in what Ms. Forsythe complained</p> <p>6 about to suggest that Mr. McKnight had told her he was</p> <p>7 going to quote performance her out?</p> <p>8 A. Removing her from his team is synonymous.</p> <p>9 Q. He could remove her from the team for some reason</p> <p>10 other than performance, couldn't he?</p> <p>11 A. If she performed some sort of gross misconduct,</p> <p>12 certainly.</p> <p>13 Q. Or if she was being harassed by a subordinate of</p> <p>14 his and the company thought it was appropriate thing to</p> <p>15 isolate her from that individual; correct?</p> <p>16 MS. KAPPELMAN: Object to the form of the</p> <p>17 question.</p> <p>18 You can answer, Trevor.</p> <p>19 A. Are you asking me if it is company policy or</p> <p>20 standard procedure to engage in unethical behavior?</p> <p>21 Q. Does Wayfair ever isolate individuals who are</p> <p>22 alleged harassers to respond to any type of harassment</p> <p>23 claim whether sexual or otherwise.</p> <p>24 MS. KAPPELMAN: Objection to form.</p> <p style="text-align: right;">Page 104</p>
<p>1 performance out, so to speak, Ms. Forsythe and her</p> <p>2 answer was no.</p> <p>3 Q. That wasn't even the allegation that Ms. Forsythe</p> <p>4 made, was it?</p> <p>5 MS. KAPPELMAN: Object to the form of the</p> <p>6 question.</p> <p>7 Do you have a question?</p> <p>8 Q. Her allegation was that was McKnight had already</p> <p>9 told her he had spoken with HR representatives to remove</p> <p>10 her.</p> <p>11 He didn't say anything about performance her out,</p> <p>12 did she?</p> <p>13 MS. KAPPELMAN: Object to the form of the</p> <p>14 question. It is synonymous.</p> <p>15 You can answer, Trevor.</p> <p>16 A. The terms are synonymous.</p> <p>17 Q. Work to remove and perform somebody out are</p> <p>18 synonymous?</p> <p>19 A. In context, yes.</p> <p>20 Q. In what context?</p> <p>21 A. In the context of the conversation that Ms. Smith</p> <p>22 and I were engaged in.</p> <p>23 Q. There is no suggestion what Ms. Forsythe told you</p> <p>24 that Mr. McKnight was going to make a performance issue</p> <p style="text-align: right;">Page 103</p>	<p>1 You can answer if you understand it, Trevor.</p> <p>2 A. I don't.</p> <p>3 Q. Have you -- the various employers that you've</p> <p>4 worked with you've handled different types of harassment</p> <p>5 claims; correct?</p> <p>6 A. Yes.</p> <p>7 Q. One of the approaches to that is to isolate the</p> <p>8 alleged harasser from the alleged harasser, right.</p> <p>9 MS. KAPPELMAN: Objection to form.</p> <p>10 You can answer?</p> <p>11 A. You mean to ensure that they don't interact with</p> <p>12 one another for the protection of the alleged victim.</p> <p>13 Q. Yes.</p> <p>14 A. Yes. I have received requests from people in the</p> <p>15 past with other organizations to not interact with their</p> <p>16 alleged harasser.</p> <p>17 Q. Have you ever granted that request?</p> <p>18 A. Yes.</p> <p>19 Q. So that segue that somebody could remove somebody</p> <p>20 from their team that has nothing to do with the</p> <p>21 employee's performance correct?</p> <p>22 A. Mr. McKnight was not the alleged harasser.</p> <p>23 Q. I'm not suggesting that he was.</p> <p>24 Another any somebody be moved off the team is if</p> <p style="text-align: right;">Page 105</p>



<p>1 there was a restructure, correct?</p> <p>2 A. Sure.</p> <p>3 Q. Okay. Another way if was a transfer from one</p> <p>4 position to another of other people; correct?</p> <p>5 A. Yes.</p> <p>6 Q. Did you ask Mr. Witte whether he ever ceased</p> <p>7 communication with Ms. Forsythe?</p> <p>8 A. If he had ceased communicating with her?</p> <p>9 Q. Yes.</p> <p>10 A. No.</p> <p>11 Q. Who made the decision to advise Ms. Forsythe not</p> <p>12 to go on a business trip to Atlanta on Tuesday morning</p> <p>13 September 23, 2019?</p> <p>14 A. I don't know.</p> <p>15 Q. Have you read that that communication was made to</p> <p>16 her?</p> <p>17 MS. KAPPELMAN: Bob, we have already heard</p> <p>18 this testimony this morning, right. About this exact</p> <p>19 issue.</p> <p>20 MR. GOODMAN: You can answer.</p> <p>21 MS. KAPPELMAN: You can testify about it</p> <p>22 again.</p> <p>23 A. I don't remember the nature of that communication</p> <p>24 or if that communication occurred.</p> <p style="text-align: right;">Page 106</p>	<p>1 MS. KAPPELMAN: Listen, Bob, we are not</p> <p>2 going to get into attorney-client privilege information.</p> <p>3 MR. GOODMAN: I'm not. I'm asking him</p> <p>4 whether he was responsible for that part of the letter.</p> <p>5 MS. KAPPELMAN: By asking him which parts he</p> <p>6 was responsible necessarily tries to get at which parts</p> <p>7 counsel were responsible so I'm directing him not to</p> <p>8 answer.</p> <p>9 MR. GOODMAN: A letter to her was not</p> <p>10 privilege. I'm not asking about privileged</p> <p>11 communication. I'm asking about communications with</p> <p>12 employees.</p> <p>13 MS. KAPPELMAN: I'm directing him not to</p> <p>14 answer with respect to who wrote any portion of that</p> <p>15 communication because it will allow you to know</p> <p>16 privileged communications and attorney work product.</p> <p>17 If you really want to discuss with a judge</p> <p>18 later, I'm happy to. But your efforts to ask which part</p> <p>19 he wrote and which part the lawyer wrote are privilege.</p> <p>20 MR. GOODMAN: It was a communication with a</p> <p>21 nonclient.</p> <p>22 MS. KAPPELMAN: You are right. The entire</p> <p>23 communication itself is not privileged because it went</p> <p>24 to her. Who wrote parts of it, is privileged</p> <p style="text-align: right;">Page 108</p>
<p>1 Q. When was the last communication you had with</p> <p>2 Ms. Forsythe before Tuesday, September 24, 2019 at noon?</p> <p>3 A. Actual communication was when she reached out to</p> <p>4 me on Thursday evening or Friday morning to indicate</p> <p>5 that she was going to take the day off because she was</p> <p>6 stressed.</p> <p>7 Q. The last communication you actually had was in</p> <p>8 writing on Monday that evening, correct?</p> <p>9 A. Then I sent the email to her indicating that we</p> <p>10 had accepted her resignation on Monday, yes.</p> <p>11 Q. Who drafted the letter?</p> <p>12 MS. KAPPELMAN: Again, to the extent it was</p> <p>13 drafted by counsel, I'm going to direct you not to</p> <p>14 answer.</p> <p>15 Q. Was it drafted by you, sir?</p> <p>16 A. If I can clarify which letter? The email itself</p> <p>17 or the attachment?</p> <p>18 Q. The email.</p> <p>19 A. Parts of it were written by me.</p> <p>20 Q. And the other part by counsel?</p> <p>21 A. Correct.</p> <p>22 Q. Did you write the part that claimed that --</p> <p>23 claimed the statement made to you on Thursday she had</p> <p>24 resigned?</p> <p style="text-align: right;">Page 107</p>	<p>1 information. That you are not entitled to.</p> <p>2 MR. GOODMAN: I disagree with you. I</p> <p>3 understand you are going to be a stonewall on that</p> <p>4 point.</p> <p>5 MS. KAPPELMAN: I'm going to maintain my</p> <p>6 objection, if that's what you mean, yes.</p> <p>7 BY MR. GOODMAN:</p> <p>8 Q. There is a draft of a severance agreement,</p> <p>9 correct?</p> <p>10 A. That's correct.</p> <p>11 Q. What was the name of the lawyer that you were</p> <p>12 dealing with? How do you spell his last name?</p> <p>13 A. I'm sorry?</p> <p>14 MS. KAPPELMAN: How do you spell Berendt's</p> <p>15 last name.</p> <p>16 A. B-E-R-E-N-D-T.</p> <p>17 Q. No "H"?</p> <p>18 A. Is there an H in Berendt? No.</p> <p>19 MS. KAPPELMAN: Do you need another break?</p> <p>20 You have just five of us sitting here waiting.</p> <p>21 MR. GOODMAN: Sometimes that is going to</p> <p>22 happen.</p> <p>23 BY MR. GOODMAN:</p> <p>24 Q. Did Mr. Berendt -- did you ever review an email</p> <p style="text-align: right;">Page 109</p>

<p>1 from me to Mr. Berendt dated September 24, 2019 at 2 10:25 a.m. 3 A. I don't recall. 4 Q. What was the immediately preceding message from 5 you to the discussion between you and Ms. Forsythe in 6 terms of separation? 7 MS. KAPPELMAN: Object to the form of the 8 question. 9 If you understand it, you can answer. 10 A. I don't understand the question. 11 Q. What did you say to Ms. Forsythe immediately 12 before she brought up the question of consideration of 13 separations as an alternative? 14 A. What I did say to her before she communicated 15 that she wanted to separate? Or what did I communicate 16 to her before I sent the email? 17 Q. What did you communicate immediately before -- to 18 her immediately before the question of separation as one 19 alternative was brought up? 20 A. When? I'm confused. 21 MS. KAPPELMAN: I think he wants to know if 22 you remember what you said to her on the call where she 23 asked for severance before she asked for it. 24 A. Before she asked for the severance?</p> <p style="text-align: right;">Page 110</p>	<p>1 When I said "him," I meant Mr. McDole. She was 2 objecting to at that point, for the first time, having 3 to continue to have a working relationship with him 4 which was not what I was telling her she had to do. So 5 I clarified that point. 6 Q. You are saying on Thursday, September 19th, she 7 see complained about Mr. McDole not the retaliation by 8 Mr. McKnight? 9 A. I believe she brought up that situation again. 10 To be quite frank there were a couple of 11 conversations back and forth. If that specific 12 conversation you need very specific details on, I 13 believe she illegally recorded the conversation. You 14 can certainly listen to the recording. 15 BY MR. GOODMAN: 16 Q. Do you recall the email that was sent to you by 17 me on the evening of September 23rd? 18 A. Not specifically, no. 19 Q. Did you follow up my communication with you to 20 anybody other than counsel specifically Ms. Gulliver or 21 any other representative of had HR. 22 MS. KAPPELMAN: Without counsel present. 23 A. No. 24 Q. Not at all? Not at all?</p> <p style="text-align: right;">Page 112</p>
<p>1 Q. Before me discussed separation as one alternative 2 way of proceeding, yes. Immediately before that, what 3 did you say to her? 4 A. I had communicated to her the results of the 5 investigation into her alleged retaliation claim. 6 Q. Say that again, please? 7 A. The intent of the call and the initial primary 8 topic was that I had concluded the investigation into 9 her allegation that she was being retaliated against so 10 I communicated that to her. 11 Q. Anything else that you recall saying immediately 12 before the subject of separation -- 13 Anything else that you said to her immediately 14 before the issue of terms of separation one way to 15 address the stipulation or not? 16 A. Yes. She asked if she was going to have to work 17 with him? And I said that was not what I was sharing 18 with her. That was not what I was saying. 19 Q. By rejecting -- by calling her retaliation claim 20 -- to use your continued -- not substantiated, you were 21 clarifying her continue to work with Mr. McKnight, 22 correct? 23 A. I may have conflated pronouns as well. Forgive 24 me.</p> <p style="text-align: right;">Page 111</p>	<p>1 A. I'm unaccustomed being communicated with by 2 opposing attorneys. I forwarded any communication that 3 you've sent to in-house counsel. 4 Q. I'm not accustomed being contacted by 5 representatives of the company to whom I have indicated 6 in a letter that I -- 7 MS. KAPPELMAN: Bob, please don't testify on 8 the record. If you have a question, let's hear it. 9 BY MR. GOODMAN: 10 Q. What was the substance of your declaration in the 11 Hamilton versus Wayfair case? 12 MS. KAPPELMAN: Object to the form. Unless 13 you've got an offer of proof as to why you need to bring 14 in a declaration from another case, I'm going to direct 15 him not to answer. If you can tell me how it is 16 relevant to this case before I so direct. 17 BY MR. GOODMAN: 18 Q. Do you remember whether Hamilton versus Wayfair 19 dealt with any issue of discrimination? 20 A. I'm sorry can you repeat? 21 Q. Do you remember whether the Federal court case by 22 Liaesha Hamilton versus Wayfair whether it dealt with 23 any issue of discrimination? 24 A. I believe the substance of that case was related</p> <p style="text-align: right;">Page 113</p>

<p>1 to meal violations and breaks.</p> <p>2 MS. KAPPELMAN: Okay. We are going to</p> <p>3 direct him not to answer about some other case that is</p> <p>4 not this one. Let's maybe focus on this case, Bob.</p> <p>5 I think you have a bunch of documents about</p> <p>6 this case.</p> <p>7 MR. GOODMAN: I don't appreciate your</p> <p>8 sarcasm.</p> <p>9 MS. KAPPELMAN: Not sarcastic. We are not</p> <p>10 going to talk about another case.</p> <p>11 MR. GOODMAN: Maybe if it an substantiated</p> <p>12 question.</p> <p>13 MS. KAPPELMAN: It doesn't matter.</p> <p>14 MR. GOODMAN: It does matter.</p> <p>15 MS. KAPPELMAN: Let's talk about this case,</p> <p>16 Bob. We are hear for his personal knowledge about this</p> <p>17 case.</p> <p>18 MR. GOODMAN: As I said, I don't know if</p> <p>19 you know a nonlecturing mode.</p> <p>20 MS. KAPPELMAN: Bob, please ask your next</p> <p>21 question. We are here for a deposition.</p> <p>22 MR. GOODMAN: I'm ready to except you are</p> <p>23 hogging the mic.</p> <p>24 MS. KAPPELMAN: Please ask your next</p> <p style="text-align: right;">Page 114</p>	<p>1 for you to know that she had rejected him prior to the</p> <p>2 allegations of nonconsenting behavior being made by</p> <p>3 Ms. Forsythe?</p> <p>4 MS. KAPPELMAN: You are stating facts not in</p> <p>5 evidence. Assume, Trevor, that he is stating facts not</p> <p>6 in evidence and you can go ahead and answer.</p> <p>7 A. Ms. Forsythe never communicated to that he had</p> <p>8 expressed an interest and had been rejected so it was</p> <p>9 not a specific question that I asked Mr. McDole.</p> <p>10 Q. And he did not disclose it?</p> <p>11 A. No, he did not.</p> <p>12 Q. Did Wayfair have I a rule against personal</p> <p>13 relationships between peers and insubordinates at any</p> <p>14 time in 2019?</p> <p>15 A. I couldn't understand every word.</p> <p>16 Q. Did Wayfair have a rule against personal</p> <p>17 relationships superiors and subordinates at any time in</p> <p>18 2019?</p> <p>19 MS. KAPPELMAN: Do you mean romantic</p> <p>20 relationships or friendships?</p> <p>21 MR. GOODMAN: Romantic relationships.</p> <p>22 A. I believe so.</p> <p>23 Q. Two of the alleged incidents of physical sexual</p> <p>24 harassment occurred before Mr. McDole was transferred</p> <p style="text-align: right;">Page 116</p>
<p>1 question. I'm going to ask you one more time.</p> <p>2 MR. GOODMAN: Counsel, I'm preparing to. If</p> <p>3 you will be quiet for a minute, I will.</p> <p>4 MS. KAPPELMAN: We are looking forward to</p> <p>5 it, thanks.</p> <p>6 BY MR. GOODMAN:</p> <p>7 Q. Have you ever have you read the deposition</p> <p>8 transcript of Ms. Forsythe?</p> <p>9 A. I'm sorry?</p> <p>10 Q. Have you read the transcript of the deposition of</p> <p>11 Ms. Forsythe?</p> <p>12 A. No, I have not.</p> <p>13 Q. Did you ask Mr. McDole or -- did Mr. McDole tell</p> <p>14 you when you questioned him in the August investigation</p> <p>15 about dealings that he had with Ms. Forsythe before he</p> <p>16 was employed at Wayfair?</p> <p>17 A. He shared with me that they new each other prior</p> <p>18 to both of their employment with Wayfair. I'm not sure</p> <p>19 what you mean by dealings.</p> <p>20 Q. Did he share with you had that he sought -- he</p> <p>21 had expressed a romantic in Ms. Forsythe before employed</p> <p>22 by Wayfair and his interest was rejected?</p> <p>23 A. No. That was not conveyed to me by Mr. McDole.</p> <p>24 Q. The nature of allegations made was that important</p> <p style="text-align: right;">Page 115</p>	<p>1 away from the supervision of Ms. Forsythe, correct?</p> <p>2 A. She allowed someone she allegedly believed to be</p> <p>3 a harasser to transfer out of her line of authority</p> <p>4 without sharing that information, yes.</p> <p>5 MR. GOODMAN: Object to responsiveness.</p> <p>6 Q. Who -- the first two alleged incidents of sexual</p> <p>7 harassment by Mr. McDole occurred at a time prior to his</p> <p>8 transfer away from the supervision of Ms. Forsythe,</p> <p>9 correct?</p> <p>10 A. I'm sorry, could you repeat the question.</p> <p>11 Q. The two incidents of alleged physical sexual</p> <p>12 harassment occurred prior to the time Mr. McDole</p> <p>13 transferred away from Ms. Forsythe; correct?</p> <p>14 A. Yes.</p> <p>15 Q. Did you ask him whether he was aware of the</p> <p>16 policy against fraternization between subordinates and</p> <p>17 superiors at Wayfair?</p> <p>18 A. No.</p> <p>19 Q. Did you ask Mr. Witte why Mr. McDole left his</p> <p>20 team and that of Ms. Forsythe on April 1, 2019?</p> <p>21 A. Did I ask Mr. Witte that question?</p> <p>22 Q. Right?</p> <p>23 A. I don't recall.</p> <p>24 Q. Did you Mr. McDole that question.</p> <p style="text-align: right;">Page 117</p>

<p>1 A. Yes.</p> <p>2 Q. What did he tell you?</p> <p>3 A. He did not enjoy working for Ms. Forsythe and had</p> <p>4 an interest in exploring a career change into operations</p> <p>5 and away from IE.</p> <p>6 Q. Did you report that to Ms. Forsythe so she could</p> <p>7 respond to that?</p> <p>8 A. Did I report to her that one of her subordinates</p> <p>9 communicated to me that he did not enjoy working for</p> <p>10 her? Is that the question?</p> <p>11 Q. Did you report to Ms. Forsythe that Mr. McDole</p> <p>12 told you an explanation of his transfer?</p> <p>13 A. No, I did not.</p> <p>14 Q. That's an example, isn't it, of a failure to pass</p> <p>15 the credibility of witness to an investigation by not</p> <p>16 going back to the complainant and talking with them;</p> <p>17 isn't it?</p> <p>18 MS. KAPPELMAN: Objection to the form of</p> <p>19 question.</p> <p>20 You can answer, Trevor.</p> <p>21 A. No, it is not.</p> <p>22 Q. You didn't attempt to verify that statement by</p> <p>23 Mr. McDole with either Mr. Witte or Ms. Forsythe?</p> <p>24 A. How would I verify with Mr. Witte or with</p> <p style="text-align: right;">Page 118</p>	<p>1 Q. That didn't effect his credibility, did it?</p> <p>2 A. I didn't find it to be impactful.</p> <p>3 Q. It gives you two different reasons but tells his</p> <p>4 bosses only one. You don't think that's a problem, sir?</p> <p>5 A. I don't know that I would communicate to my boss</p> <p>6 that I didn't like her. So it was not problematic.</p> <p>7 Q. Not if you communicate to your boss that you</p> <p>8 didn't like her?</p> <p>9 MS. KAPPELMAN: Really, Bob? Is this really</p> <p>10 your question.</p> <p>11 BY MR. GOODMAN:</p> <p>12 Q. Would you be afraid of retaliation, sir?</p> <p>13 A. Would I be afraid of retaliation? No.</p> <p>14 Q. Would you be afraid of adverse consequences?</p> <p>15 A. No. Again, I would just find it rude.</p> <p>16 Q. Yes know Mr. McDole told her that he didn't think</p> <p>17 she was a good person?</p> <p>18 MS. KAPPELMAN: Is that a question, Bob?</p> <p>19 MR. GOODMAN: Yes.</p> <p>20 BY MR. GOODMAN:</p> <p>21 Q. You knew that, didn't you?</p> <p>22 A. That was after the transfer.</p> <p>23 Q. So it was okay to -- it was credible for him to</p> <p>24 say something different to his bosses than he said to</p> <p style="text-align: right;">Page 120</p>
<p>1 Ms. Forsythe that Mr. McDole was no longer happy</p> <p>2 reporting to someone?</p> <p>3 Q. Because they had to be the recipients of a</p> <p>4 requested transfer in order for the transfer to occur.</p> <p>5 You knew that at the time that he would have had to tell</p> <p>6 either an immediate superior, Ms. Forsythe or superior</p> <p>7 supervisor or Mr. Witte of his reason for requesting a</p> <p>8 transfer, correct?</p> <p>9 A. He would need to give them a reason to transfer,</p> <p>10 yes.</p> <p>11 Q. He didn't talk to either of them about what he</p> <p>12 told you, did he?</p> <p>13 A. I believe the second part is what he communicated</p> <p>14 to them and both of them confirmed that.</p> <p>15 The second part being that he wished to explore a</p> <p>16 role in operations.</p> <p>17 Q. So you are aware that he stated something</p> <p>18 different to you about motivation than he stated to</p> <p>19 Ms. Forsythe and Mr. Witte?</p> <p>20 MS. KAPPELMAN: Objection to form of the</p> <p>21 question.</p> <p>22 You can answer.</p> <p>23 A. He gave two reasons and one of those reasons was</p> <p>24 consistent with what he told them.</p> <p style="text-align: right;">Page 119</p>	<p>1 you, but then speak the truth after he was transferred?</p> <p>2 MS. KAPPELMAN: Object to the form of the</p> <p>3 question.</p> <p>4 BY MR. GOODMAN:</p> <p>5 Q. That is not what you are saying?</p> <p>6 A. I did not find it problematic for him to not</p> <p>7 share with her that he didn't like her or like reporting</p> <p>8 to her at the time he requested a transfer. I did not</p> <p>9 think that was problematic and I still do not.</p> <p>10 Q. Did you ever ask Mr. McDole about an HR meeting</p> <p>11 that he had suggested to Ms. Forsythe that never ended</p> <p>12 up happening in April of 2019?</p> <p>13 A. I'm sorry, can you repeat the question?</p> <p>14 Q. Do you recall asking Mr. McDole about a meeting</p> <p>15 that he claims he suggested to Ms. Forsythe could occur</p> <p>16 but did never set up?</p> <p>17 A. No, I don't believe I was aware of that meeting</p> <p>18 or alleged meeting.</p> <p>19 Q. You know what I'm talking about as we speak?</p> <p>20 A. I'm sorry?</p> <p>21 Q. You know what I'm talking about when I ask the</p> <p>22 question?</p> <p>23 A. No, I don't.</p> <p>24 Q. I asked you earlier about the reluctance on the</p> <p style="text-align: right;">Page 121</p>

<p>1 resignation.</p> <p>2 MR. GOODMAN: Object to the responsiveness.</p> <p>3 Q. Who knew before you sent your email that you were</p> <p>4 claiming that Ms. Forsythe was separated besides Mr.</p> <p>5 Berendt?</p> <p>6 A. Mr. McKnight, Ms. Witte, Ms. Smith, Ms. Axelrad.</p> <p>7 Q. When did they know?</p> <p>8 A. There may be others.</p> <p>9 Those are the only names I can think of.</p> <p>10 Q. What is the earliest they would have known?</p> <p>11 A. That we were communicating our intent to accept</p> <p>12 her resignation? I'm sorry?</p> <p>13 Q. When is your earliest they would have known that</p> <p>14 that is when you intended to deliver to her?</p> <p>15 A. Thursday.</p> <p>16 Q. But none of them told her to take the business</p> <p>17 trips off her calendar?</p> <p>18 MS. KAPPELMAN: Objection. Asked and</p> <p>19 answered six times.</p> <p>20 Trevor, one more time and maybe we can move</p> <p>21 on.</p> <p>22 BY MR. GOODMAN:</p> <p>23 Q. None of the people who supposedly knew this and</p> <p>24 what you were going to do told her not to go on a</p> <p style="text-align: right;">Page 130</p>	<p>1 A. Yes.</p> <p>2 (Document marked as Exhibit No. 1 for</p> <p>3 identification.)</p> <p>4 Q. What is this email that is Shaffer 1, Bates No.</p> <p>5 466.</p> <p>6 A. Those are emails that I sent to myself as I was</p> <p>7 discussing -- as I was having a conversation with --</p> <p>8 based on the time.</p> <p>9 Q. You acknowledge in the third paragraph that there</p> <p>10 was there at least a second instance of Mr. McDole</p> <p>11 asking for information in a harsh manner. Do you see</p> <p>12 that?</p> <p>13 A. Yes.</p> <p>14 Q. And that you recorded that that employee spoke to</p> <p>15 McDole. Do you see that?</p> <p>16 A. Yes.</p> <p>17 Q. How did you learn that?</p> <p>18 A. There would have be a conversation with Ms. Smith</p> <p>19 and with Mr. McDole and Mr. McKnight. So one of them</p> <p>20 would have shared that with me.</p> <p>21 Q. Did you didn't that learn from Mr. Witte you</p> <p>22 learned that from McKnight?</p> <p>23 A. I'm reading to make sure I'm giving you the right</p> <p>24 who said what.</p> <p style="text-align: right;">Page 132</p>
<p>1 business trip the following week; correct?</p> <p>2 MS. KAPPELMAN: Asked and answered answer.</p> <p>3 If you known, Trevor. Six time. This may be a charm.</p> <p>4 A. The attempt was to accept her resignation on</p> <p>5 Friday. She called out that day. I don't know when it</p> <p>6 was communicated to her that she shouldn't travel.</p> <p>7 Q. You don't know if it was ever communicated to</p> <p>8 her, do you?</p> <p>9 MS. KAPPELMAN: Asked and answered, Bob.</p> <p>10 Answer one more time, Trevor. Maybe we can</p> <p>11 move on.</p> <p>12 A. I don't know that.</p> <p>13 Q. For your information, Mr. Figueroa, I'm looking</p> <p>14 at some documents, I may ask you several questions about</p> <p>15 some of them to minimize the number of questions.</p> <p>16 THE VIDEOGRAPHER: I'm sorry, did you say</p> <p>17 you wanted to go off the record.</p> <p>18 MR. GOODMAN: No, I did not.</p> <p>19 THE VIDEOGRAPHER: If you can get a little</p> <p>20 closer to your mic. There a number of documents that I</p> <p>21 want to look at.</p> <p>22 BY MR. GOODMAN:</p> <p>23 Q. I need to screen sharing to be enabled, please.</p> <p>24 Can you see this?</p> <p style="text-align: right;">Page 131</p>	<p>1 This was a conversation with Ms. Smith, Mr. Witte</p> <p>2 and Mr. McKnight. I was just documenting what was said</p> <p>3 during that conversation.</p> <p>4 Q. What did Matt and Lowe say to McDole about his</p> <p>5 communications in a conversation that was posed to you?</p> <p>6 A. As I recall that they spoke to him about his</p> <p>7 email communication and that he didn't feel -- that</p> <p>8 Mr. McDole didn't feel that it was harsh.</p> <p>9 Q. So just another --</p> <p>10 A. Yes.</p> <p>11 Q. -- not withstanding in this case the actual email</p> <p>12 as evidence in the contrary, right?</p> <p>13 MS. KAPPELMAN: Objection to the form of</p> <p>14 question.</p> <p>15 Listen to the question, Trevor.</p> <p>16 BY MR. GOODMAN:</p> <p>17 Q. Did you read the emails themselves?</p> <p>18 A. I read the emails, yes.</p> <p>19 Q. Did you read the emails that were characterized</p> <p>20 as aggressively asking for information that</p> <p>21 Ms. Forsythe claimed Mr. McDole knew she did not have?</p> <p>22 A. Yes.</p> <p>23 Q. What was your conclusion about whether it was --</p> <p>24 the email was appropriate?</p> <p style="text-align: right;">Page 133</p>

<p>1 A. I agreed with Ms. Smith's statement there that 2 the email seemed to be appropriate and not hostile. 3 Q. So when you made a note that Candice said email 4 seemed to be appropriate, do you see that? 5 A. Um-hmm. 6 Q. That was a single email, correct? 7 A. No, I believe it was more than one. 8 Q. What email was she referring to when she said 9 email seemed to be appropriate? 10 A. Email as in email communication not a singular 11 email. The ones that she and I reviewed. 12 Q. Did you review all of the ones that Ms. Forsythe 13 was complaining about to Mr. McDole and Mr. McKnight 14 to Mr. Witte and Mr. McKnight? 15 A. I reviewed a series of emails. I can't say for 16 certain that Candice and I reviewed the identical 17 emails. 18 Q. You didn't form any independent conclusion 19 yourself, you just followed what your boss's boss 20 concluded? 21 A. No. That's no what I said. 22 Q. You said you agreed with her. Did you form any 23 independent conclusion yourself about the 24 appropriateness of the emails?</p> <p style="text-align: right;">Page 134</p>	<p>1 others? 2 A. Some of his other transfer requests had been 3 approved so he was seeking other roles. He had options. 4 Q. Are you saying that "the others" does not refer 5 to other employees? 6 A. Correct. 7 Q. It refers to other transfer requests? 8 A. Correct. 9 He was seeking other opportunities and had 10 options is what I was told in this conversation. 11 Q. What did you mean when you said, Submitted a 12 series of transfer requests that we, apostrophe, 13 approved to others? 14 A. The apostrophe is a typo. 15 MS. KAPPELMAN: Asked and answered. 16 You can answer again. 17 Q. It seems to suggest that he submitted transfer 18 requests of a type that were approved for others? 19 MS. KAPPELMAN: Object to the form. 20 Mischaracterizes his testimony. You can answer again, 21 Trevor. 22 A. As I recall, the reason I wrote that sentence 23 down is that someone shared that McDole had submitted a 24 series of transfer requests and that he had options</p> <p style="text-align: right;">Page 136</p>
<p>1 A. Yes. I reviewed emails that were provided to me 2 and found them not to be hostile as did Ms. Smith. I 3 can't tell you if they were the exact same emails. 4 Q. It's hostile by definition for an email to ask 5 somebody for information that the sender knows they 6 don't have; right? 7 MS. KAPPELMAN: Object to the form of the 8 question. 9 BY MR. GOODMAN: 10 Q. You can answer. 11 A. No. 12 Q. So if I ask you for information that I know you 13 don't have and keep asking you for information that I 14 know you don't have, that's not hostile communication? 15 A. No. 16 Q. Is it stupid communication? 17 MS. KAPPELMAN: Object to form of the 18 question. 19 You can answer, Trevor. 20 Q. It is not hostile, is what you are saying? 21 A. I would woman describe it as unusual. 22 Q. So McDole submitted a transfer request that were 23 approved for others. 24 What was the meaning that were approved for</p> <p style="text-align: right;">Page 135</p>	<p>1 available to him. Others had been approved as well as 2 the one that he ended up taking. 3 BY MR. GOODMAN: 4 Q. You admit that is a strained interpretation of 5 that line, don't you? 6 MS. KAPPELMAN: Object to the form of the 7 question. 8 You can answer, Trevor. 9 A. If I were interpreting someone else's word, 10 perhaps. But they are mine so it is not a strained. 11 Q. Let me go back to that document for a minute. 12 Who is B-A-I-S-H-R-A -- 13 A. Baishra Andriati (ph)is the associate director 14 that I report to. 15 Q. She is the person between you and Ms. Smith? 16 A. She was at the time, yes. 17 She is now the person between myself and Ms. 18 Axelrad. Ms. Smith no longer supports supply chain 19 operations. 20 Q. What was the source of the statement that McDole 21 blew up in April? 22 A. Where is that? 23 Q. The past examples. First paragraph from the 24 bottom. Candice paragraph.</p> <p style="text-align: right;">Page 137</p>

<p>1 A. Candice asked if we had past examples of any 2 inappropriate conduct or inappropriate behavior. 3 Matt replied, yes, that there had been an 4 argument between he and Emily and that McDole had raised 5 his voice. 6 Q. It is actually a unilateral description. It says 7 McDole blew up at Emily. It doesn't say the reverse, 8 does it? 9 A. It does not. 10 (Document marked as Exhibit No. 2 for 11 identification.) 12 BY MR. GOODMAN: 13 Q. Now what -- you see this next exhibit, Exhibit 2. 14 497, 498. 15 Do you see that? 16 A. Yes. 17 Q. That was notes of a conversation with 18 Ms. Forsythe on August 29th? 19 A. Yes. 20 Q. You didn't talk to her for more than a week after 21 the earlier email describing what the complaint was, 22 right? 23 A. I reached out to her on the 21st. Then I don't 24 remember the dates after. She communicated to me via Page 138</p>	<p>1 A. I described the incident as she described it. 2 And asked him if he recalled that occurring. And he 3 denied that that occurred. 4 Q. Did you not ask him more specific questions as 5 you did in another context like, "Did you put your hand 6 on her thigh"? 7 A. I asked specifically with the words that she gave 8 and then I asked if he had any physical contact with her 9 and he denied both. 10 Q. Did you ask him whether he put his hand on her 11 thigh? 12 A. Yes. 13 Q. Did you ask him whether she scooted back and he 14 did not move? 15 A. I asked as she described it here so I believe so. 16 Q. It says he was focused on task not assigned to 17 him. This was when she was his boss, correct? 18 A. I'm sorry where are you? 19 Q. In March. 20 A. I believe he still reported to her in March. 21 Q. Would it be appropriate for him to be focusing on 22 tasks that were not assigned to him by a superior? 23 A. Potentially. 24 Q. Potentially be inappropriate or appropriate? Page 140</p>
<p>1 Slack that she would available on the 28th or the 29th. 2 That she had taken some time off. 3 Q. In the paragraph beginning "In January --" the 4 person who is described as having meltdown moments was 5 Mr. McDole; correct? 6 A. That's what she reported to me, yes. 7 Q. And this is based on a conversation that -- who 8 was this email based on a conversation with? 9 A. These are my notes on a conversation that I was 10 having with Ms. Forsythe. 11 Q. It says in the middle paragraph, "Came to an 12 agreement that tone of email should change." 13 Do you see that? 14 A. Yes. 15 Q. So that was Mr. McDole promising that he would 16 change the tone of his emails. 17 A. That's what she stated yes. 18 Q. Did you ask Mr. McDole about the incident in 19 January of 2019, the touching incident, in the terms 20 that are described in the paragraph beginning "One 21 incident" in your notes? 22 A. Yes. 23 Q. You spoke with him. 24 Did you ask him what he did with his chair? Page 139</p>	<p>1 A. It could potentially be inappropriate. Every 2 associate at Wayfair is tasked with being innovative and 3 solving problems that sometimes exceed the scope of 4 roles. 5 Q. Is that an explanation he ever gave you for 6 focusing on a tasks not assigned to him before 7 April 1, 2018? 8 A. No, that is my explanation for expectations at 9 Wayfair. 10 Q. Of expectation what? 11 A. At Wayfair. 12 Yes. Why it may not be appropriate to focus on 13 tasks not immediately assigned to you. 14 Q. He didn't use that rationale, did he? 15 A. No. 16 Q. Did you ask him about this second incident 17 involving him sitting next to -- sitting close to 18 Ms. Forsythe and moving closer to her even though she 19 was uncomfortable? 20 A. Yes. 21 Q. Did you ask him about asking if they could spend 22 time together after work? 23 A. Yes. 24 Q. This was the same month that he says he was Page 141</p>

<p>1 requesting to be transferred away from her, right?</p> <p>2 A. Yes.</p> <p>3 Q. Did he acknowledge that he sought to spend time</p> <p>4 after work with somebody who was trying to get away from</p> <p>5 as a supervisor?</p> <p>6 A. No. He denied those allegations and stated that</p> <p>7 she was actually seeking his attention.</p> <p>8 Q. Did he ever complain that she had touched him</p> <p>9 lack of consent?</p> <p>10 A. I'm sorry, can you repeat the question?</p> <p>11 Q. Did he ever complain that she had touched him</p> <p>12 without his consent?</p> <p>13 A. That she had touched him? No, he didn't complain</p> <p>14 about that.</p> <p>15 Q. There is a reference in the working in Paris</p> <p>16 paragraph to, My complaint of Emily would be get out of</p> <p>17 the building.</p> <p>18 Do you see that?</p> <p>19 A. Yes.</p> <p>20 Q. Was that -- that's what Mr. McDole said?</p> <p>21 A. That's what she alleged he said.</p> <p>22 Q. If that's what he said would that have been</p> <p>23 appropriate?</p> <p>24 A. Would it be appropriate for him to tell her to</p> <p style="text-align: right;">Page 142</p>	<p>1 Q. What did he say?</p> <p>2 A. That he didn't ask her that question.</p> <p>3 Q. What about asking Emily whether she was on dating</p> <p>4 apps. Did you ask him that question?</p> <p>5 A. Yes.</p> <p>6 Q. What did he say?</p> <p>7 A. I don't recall exactly. I believe he said he</p> <p>8 made a joke about it.</p> <p>9 Q. Then when you saw this, did -- and asked him</p> <p>10 about if he and Ms. Forsythe should get together again,</p> <p>11 what did he say in response to that?</p> <p>12 A. I asked and he denied that.</p> <p>13 Q. Okay. Next to last paragraph. Mr. Lowe</p> <p>14 apparently told you or -- Mr. Lowe apparently told</p> <p>15 Ms. Forsythe and she complained about it to you that</p> <p>16 Mike is trying sabotage her.</p> <p>17 Did you ask Mr. Lowe about that report by</p> <p>18 Ms. Forsythe?</p> <p>19 A. I believe so but I don't recall exactly.</p> <p>20 Q. You don't recall what he said?</p> <p>21 A. Correct.</p> <p>22 Q. Bates No. 526, the email that you refer to in</p> <p>23 which Ms. Forsythe clarified that she was touched</p> <p>24 between her breasts?</p> <p style="text-align: right;">Page 144</p>
<p>1 get out of the building?</p> <p>2 Q. McDole to tell her or to tell others that she</p> <p>3 needed to get out of building.</p> <p>4 A. It would not be appropriate to say that to her</p> <p>5 using those words.</p> <p>6 Q. Did you ask Mr. McDole whether he reached out and</p> <p>7 touched the buttons on her pokkadot shirt?</p> <p>8 A. Yes, I did.</p> <p>9 Q. Did he tell you that he wasn't in the same room</p> <p>10 any day that she was wearing the pokkadot shirt?</p> <p>11 A. No.</p> <p>12 Q. So he admitted that he was with her when she was</p> <p>13 wearing a pokkadot shirt?</p> <p>14 A. This didn't occur in a room. It allegedly</p> <p>15 occurred in an open office environment.</p> <p>16 Q. Whatever it occurred in. What is the answer to</p> <p>17 my question?</p> <p>18 A. Could you repeat it?</p> <p>19 Q. Did he tell you that he was never with her when</p> <p>20 she was wearing a pokkadot shirt?</p> <p>21 A. No.</p> <p>22 Q. Did you ask him whether he inquired of Emily</p> <p>23 whether she still had a boyfriend?</p> <p>24 A. I did ask him, yes.</p> <p style="text-align: right;">Page 143</p>	<p>1 A. Yes.</p> <p>2 Q. You got a clarification, did you ask Mr. McDole</p> <p>3 about that?</p> <p>4 A. Yes.</p> <p>5 Q. What did he say?</p> <p>6 A. No. He denied it.</p> <p>7 Q. Did you find, as a man, that his denials of</p> <p>8 physical sexual harassment allegations by</p> <p>9 Ms. Forsythe was credible?</p> <p>10 MS. KAPPELMAN: Object to the form of the</p> <p>11 question.</p> <p>12 You can answer, Trevor, as person, as an</p> <p>13 investigator, as an HR professional.</p> <p>14 BY MR. GOODMAN:</p> <p>15 Q. And as a man?</p> <p>16 A. I don't understand the question.</p> <p>17 Q. Did you find his flat denial of very detailed</p> <p>18 physical sexual harassment allegations credible, sir?</p> <p>19 A. Yes.</p> <p>20 Q. Is that based on personal experience? Or work</p> <p>21 experience? Or neither?</p> <p>22 A. I had no reason to doubt his credibility during</p> <p>23 the course of this investigation.</p> <p>24 Q. You had no reason to doubt the credibility of</p> <p style="text-align: right;">Page 145</p>



<p>1 week that I was at a summit conference and there were 2 multiple attempts. I would reach out asking if she had 3 time or availability on her calendar and then a couple 4 of hours later I would get a response either by email or 5 by Slack, Can you talk right now? Or did you have time 6 to set something up? 7 We missed each other a couple of times because I 8 was at a conference. And she wasn't giving me specific 9 times that she was available. She would just say, "How 10 about right now?" And I would be in the middle of a 11 meeting or something. 12 (Document marked as Exhibit No. 3 for 13 identification.) 14 BY MR. GOODMAN: 15 Q. Is this the formal complaint of retaliation that 16 you investigated or is this a conclusion of that which 17 581 Bates No. 581. I will call it Exhibit 3. 18 A. This is -- my understanding is that this is her 19 initial complaint of retaliation. 20 Q. Is it true that she had been on Mr. McKnight's 21 team less than three weeks? 22 A. I believe so. 23 Q. Is it true that she with him only one time in 24 person?</p> <p style="text-align: right;">Page 150</p>	<p>1 statement that he made to her? 2 A. My belief of his position was not based solely on 3 his denial of having said what she said that he said. 4 Q. What else was it based on? 5 A. He described that he was having a conversation 6 with her where she became upset. That he had shared 7 with her that things were working. And he had used that 8 phrase with me previously that he was afraid things 9 weren't going to work with her. 10 Q. That to you justified his telling her that he was 11 -- already talked to Matt in HR about getting her off 12 the team? 13 A. I would conclude that it would be difficult to 14 quote, unquote get her off his team if he was denying to 15 HR that he wanted her off of his team. 16 Q. Are you saying that he said he was frustrated 17 with her and that's why he said something to her that 18 she may have understood as threatening? 19 A. He was having conversations with her based on, as 20 previously mentioned in the other emails, that her 21 communication needed work. 22 Q. But he denied telling her that he was going to 23 get her off the team or that he had talked to HR; 24 correct?</p> <p style="text-align: right;">Page 152</p>
<p>1 A. I don't recall. 2 Q. Is it true that he was made aware by Mr. Berendt 3 of her complaint to HR in mid August? 4 A. I believe so. 5 Q. He was saying -- getting me off -- Mr. McKnight 6 talking about getting her off his team, are you telling 7 the jury you did not believe her? 8 A. I'm not sure I understand the question. 9 Q. You asked Mr. McKnight about that; right? 10 A. Yes. 11 Q. You accepted his denial, right? 12 A. He denied having said that to her. 13 Q. Right. And you accepted that as the end of the 14 matter; right? 15 A. I don't know that I would categorize it as the 16 end of the matter. 17 Q. Well, you told her that you concluded -- 18 A. Based on that statement. 19 Q. You told her that you concluded her complaint of 20 retaliation in general had not been substantiated, 21 right? 22 A. Yes. 23 Q. Even though everything she said in that email was 24 true except that you believed him concerning the</p> <p style="text-align: right;">Page 151</p>	<p>1 A. He denied saying that they needed to go to HR to 2 get her off the team and he denied saying that he wanted 3 her off of his team. 4 (Document marked as Exhibit No. 4 for 5 identification.) 6 BY MR. GOODMAN: 7 Q. What is exhibit -- Bates No. 591 Exhibit 4? 8 A. This was an appointment request that I believe is 9 surrounding her allegation -- Ms. Forsythe's allegation 10 of retaliation. 11 Q. That you sent to her? 12 A. No. 13 Q. She sent it to you? 14 A. Yes. 15 Q. And 1269 is your notes with Mr. McKnight, 16 correct? 17 A. I believe so. If I can have one second to read 18 it fast. Okay. 19 Q. That is a conversation with Mr. McKnight, 20 correct? 21 A. That's correct. 22 Q. What is the exhibit -- what is Bates No. 1271. 23 A. Conversation with Ms. Forsythe. 24 Q. Did you go through that with Mr. --- that was on</p> <p style="text-align: right;">Page 153</p>

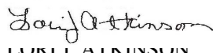
<p>1 Thursday, did you go through that with Mr. McKnight?</p> <p>2 A. May I have a moment to read it?</p> <p>3 Q. Yes.</p> <p>4 A. Yes. These are some of the conversation with</p> <p>5 Ms. Forsythe.</p> <p>6 Q. That Mr. McKnight had said?</p> <p>7 A. I believe this is prior to based on the time</p> <p>8 stamp. I could be wrong.</p> <p>9 Q. 6:15. 11:13 p.m. and 11:13 p.m.?</p> <p>10 A. I pushed send at the same time. The second</p> <p>11 conversation I have notes there showing the time I was</p> <p>12 taking the notes, so it is 5:45 a.m. my time.</p> <p>13 Q. The information that she provided you effectively</p> <p>14 responded to everything Mr. McKnight told you and gave</p> <p>15 you in more detail about their conversation?</p> <p>16 A. The details were fairly consistent. She sort of</p> <p>17 downplayed her own volume and he indicated that she was</p> <p>18 louder and more upset than she had indicated.</p> <p>19 Q. You do always give the benefit of the doubt to</p> <p>20 management when you have an employee-management dispute?</p> <p>21 A. No. And I don't know that I'm doing that here.</p> <p>22 Q. So did you go back to Mr. McKnight and address</p> <p>23 the issues raised by Ms. Forsythe's email to you which</p> <p>24 you said was after you talked with him?</p> <p style="text-align: right;">Page 154</p>	<p>1 September 21, the September 20, 2019; correct?</p> <p>2 A. Yes.</p> <p>3 Q. According to your testimony, you had already</p> <p>4 decided that Ms. Forsythe was no longer employed by</p> <p>5 Wayfair; correct?</p> <p>6 MS. KAPPELMAN: Objection to the form of the</p> <p>7 question.</p> <p>8 A. I did not make that decision.</p> <p>9 Q. You said you reached the conclusion that she had</p> <p>10 resigned on Thursday. This is Friday morning, correct,</p> <p>11 at 1:25:27 a.m. your time?</p> <p>12 MS. KAPPELMAN: Mischaracterizes the</p> <p>13 testimony. You can answer, Trevor.</p> <p>14 A. The decision had been made to accept her</p> <p>15 resignation on Thursday.</p> <p>16 Q. Say that again?</p> <p>17 A. The decision had been made to accept her</p> <p>18 resignation on Thursday.</p> <p>19 Q. You didn't respond by saying "This a moot point;"</p> <p>20 did you?</p> <p>21 A. That was not my response to this, no.</p> <p>22 Q. Neither did Mr. Witte or Mr. McKnight, the other</p> <p>23 addressees, they didn't respond that way either, did</p> <p>24 they?</p> <p style="text-align: right;">Page 156</p>
<p>1 A. I didn't follow that.</p> <p>2 Q. Did you go back to Mr. McKnight -- did you</p> <p>3 address with Mr. McKnight the issues raised by</p> <p>4 Ms. Forsythe in this email?</p> <p>5 A. I asked him to describe the conversation to me.</p> <p>6 Q. So you did not specifically ask him to address</p> <p>7 each of the aspects of this email; correct?</p> <p>8 A. I asked him -- I would have to look at my</p> <p>9 investigation workbook. But I addressed this call with</p> <p>10 him and he provided a very different recap of that call.</p> <p>11 Q. By the investigation workbook, are you referring</p> <p>12 to the Excel spreadsheet you created?</p> <p>13 A. The Excel document, yes.</p> <p>14 Q. So the investigation workbook, so to speak, would</p> <p>15 reflect what you did with all the specific information</p> <p>16 about a conversation; correct?</p> <p>17 A. Yes.</p> <p>18 I typically prepare questions in advance on the</p> <p>19 workbook. But then take notes as people sort of</p> <p>20 describe things, freehand. And then move things over or</p> <p>21 capture them in the Excel document depending on the</p> <p>22 nature of the conversation and how quickly people talk.</p> <p>23 Q. Okay.</p> <p>24 Looking at 1306 is the PTO email from Friday,</p> <p style="text-align: right;">Page 155</p>	<p>1 A. I don't know how they would have responded. I</p> <p>2 don't have access to their email.</p> <p>3 Q. You are not aware of him responding that she was</p> <p>4 pissing in the wind, are you?</p> <p>5 MS. KAPPELMAN: Object to the form of the</p> <p>6 question. I'm sure you didn't mean to say it that way.</p> <p>7 You can answer, Trevor.</p> <p>8 A. I apologize but I'm not familiar with the phrase.</p> <p>9 Q. You never heard the phrase "pissing in the wind"?</p> <p>10 A. No.</p> <p>11 Q. You are not aware of anybody saying to her,</p> <p>12 "Don't worry about taking PPO, you are already out of</p> <p>13 our organization"?</p> <p>14 A. I'm not aware that anyone said that to her, no.</p> <p>15 Q. Her insight and would you consider --</p> <p>16 There is a gap between the first and second</p> <p>17 paragraph; do you see that?</p> <p>18 A. Yes.</p> <p>19 Q. Is that a result of cutting and pasting into this</p> <p>20 email from another email?</p> <p>21 A. I don't know.</p> <p>22 Q. Would that be an explanation for the gap?</p> <p>23 A. Potentially.</p> <p>24 Q. According to this other one --</p> <p style="text-align: right;">Page 157</p>

<p>1 (Break in the proceedings.)</p> <p>2 THE VIDEOGRAPHER: We are back on the</p> <p>3 record. The time is 3:43 p.m. Eastern time. This is 0</p> <p>4 beginning of media file five.</p> <p>5 By MR. GOODMAN:</p> <p>6 Q. Mr. Shaffer, can you see the document on the</p> <p>7 screen dated 9-19-2019, Emily notes?</p> <p>8 A. Yes.</p> <p>9 Q. What I guess -- those were reflecting -- that is</p> <p>10 another -- I don't know why he made the reference to</p> <p>11 5-25. But that is a different conversation than the one</p> <p>12 that we went over before, correct?</p> <p>13 A. I believe this was her sharing with me how the</p> <p>14 conversation proceeded with Mr. McKnight that led her to</p> <p>15 conclude that she was being retaliated against.</p> <p>16 Q. This is different than the one that was sent on</p> <p>17 the 17th that you said was a precursor to that email;</p> <p>18 correct, to this email?</p> <p>19 MS. KAPPELMAN: These are notes.</p> <p>20 A. These are my notes. This is an email to myself.</p> <p>21 Q. This is your follow-up to that email?</p> <p>22 A. She sent that email. I reached out and spoke to</p> <p>23 her and these are notes that I transcribed to myself.</p> <p>24 Q. I stand corrected.</p> <p style="text-align: right;">Page 162</p>	<p>1 complaint about Mr. McDole; correct?</p> <p>2 A. That was her interpretation of why she was not</p> <p>3 copied on certain emails.</p> <p>4 Q. And it says, "Does he know Mike? I'm not sure."</p> <p>5 Correct?</p> <p>6 A. Correct. I asked her if he even knew who</p> <p>7 Mike McDole was outside of the context of knowing that</p> <p>8 he was a former associate of hers who had been involved</p> <p>9 in the investigation and she said "I'm not sure."</p> <p>10 Q. You now know that he was aware that Mr. McDole --</p> <p>11 he was aware of her complaint against Mr. McDole that</p> <p>12 was formalized in mid August; correct?</p> <p>13 A. Yes, I was aware that he knew about that</p> <p>14 complaint, absolutely.</p> <p>15 Q. Did you ask Mr. McKnight about the comment that</p> <p>16 was attributed to him during his first meeting with</p> <p>17 Ms. Forsythe about the stock price?</p> <p>18 A. Yes.</p> <p>19 Q. Did he confirm that?</p> <p>20 A. No.</p> <p>21 Q. So you have a female employee making a number of</p> <p>22 complaints, in particular, about two male employees and</p> <p>23 in both cases you gave them credit for their denial even</p> <p>24 though her allegations were much more specific in each</p> <p style="text-align: right;">Page 164</p>
<p>1 She was giving you more detail?</p> <p>2 A. Yes.</p> <p>3 Q. And what was the meaning of the reference,</p> <p>4 absolutely that makes sense, in quotes, in the second?</p> <p>5 A. That was me responding to what she was</p> <p>6 describing.</p> <p>7 I put it in parenthesis because it is me speaking</p> <p>8 during the course of --</p> <p>9 Q. You think it made sense that she should at least</p> <p>10 be cc'd under those circumstances?</p> <p>11 A. I agree when she made the statement, "I need to</p> <p>12 be aware of stuff." I said that made sense.</p> <p>13 It's a simple aside. I wasn't characterizing her</p> <p>14 entire complaint.</p> <p>15 Q. She let you know that other members of her team</p> <p>16 told her that she was being excluded from communications</p> <p>17 with them, correct?</p> <p>18 A. Can you repeat the question?</p> <p>19 Q. She told you in the second paragraph under the</p> <p>20 5:45 a.m. reference that other members of his team told</p> <p>21 her that she has being cut out of communications;</p> <p>22 correct?</p> <p>23 A. Yes.</p> <p>24 Q. And she expressed that was related to her</p> <p style="text-align: right;">Page 163</p>	<p>1 case; correct?</p> <p>2 MS. KAPPELMAN: Object to the form of the</p> <p>3 question.</p> <p>4 You can answer, Trevor.</p> <p>5 A. That's not how I would have described it.</p> <p>6 Q. How would you describe it? How would you</p> <p>7 describe your claiming that detail allegations by</p> <p>8 Ms. Forsythe were unsubstantiated when the reason seems</p> <p>9 to be in most cases, mainly or only, that the</p> <p>10 individuals denied those allegations?</p> <p>11 MS. KAPPELMAN: Object to the form of the</p> <p>12 question.</p> <p>13 You can answer it, if you understand.</p> <p>14 THE WITNESS: I believe I do.</p> <p>15 A. And the allegations lacks evidence or witnesses</p> <p>16 to substantiate or support them.</p> <p>17 Q. Well, Ms. Forsythe never said that physical</p> <p>18 sexual harassment was witnessed, did she?</p> <p>19 A. I specifically asked if it was and she said that</p> <p>20 it was not.</p> <p>21 Q. So is that to say right there so long as</p> <p>22 something is not witnessed you always believe the</p> <p>23 denier. That's what you seem to be saying, sir?</p> <p>24 A. No, that's not what I'm saying.</p> <p style="text-align: right;">Page 165</p>

<p>1 Q. What are you saying if the fact that she was -- 2 the fact that -- just for the record the prior email was 3 1271 and 1272. 4 What do you mean other than that you give credit 5 to the deniers to two serious allegations against 6 Mr. McKnight and Mr. McDole were deemed unsubstantiated 7 based, again, largely or if not exclusively on the fact 8 that they denied them? 9 MS. KAPPELMAN: I totally don't understand 10 that question, Trevor. But if you do, go for it. 11 THE WITNESS: I don't. 12 Q. Are there any other instances at Wayfair where 13 you have determined allegations to be unsubstantiated 14 solely because the allegations were denied? 15 A. Me personally or at the organization as a whole? 16 Q. You as an HR representative? 17 A. No. 18 Q. What about the organization as a whole? 19 A. I have no idea. 20 Q. And you are aware of any other instance in which 21 detailed allegations were denied and the denial was -- 22 any reason that the allegations were being 23 unsubstantiated at Wayfair? 24 A. I apologize I don't understand what you are</p> <p style="text-align: right;">Page 166</p>	<p>1 claiming was in retaliation, did it? 2 A. It went to substantiating his version of the 3 story for which there were no witnesses. 4 Q. She was not a witness to her own conversation 5 with Mr. McKnight, sir? 6 A. She was a participant not a witness. 7 Q. Have you ever been a courthouse on a trial in an 8 employment case? 9 A. No. 10 Q. You know, don't you, that employees can testify 11 as to conversations that they've had with members of 12 management in a lawsuit; correct? 13 MS. KAPPELMAN: I object. Where is this 14 going, Bob? Anywhere? Is it going anywhere relevant? 15 After five hours of deposition. I hope. 16 Q. Do you know? 17 MS. KAPPELMAN: Does he know what? What 18 is the question, Bob? 19 BY MR. GOODMAN: 20 Q. An employee can testify to their own 21 participation in a conversation, correct? They are not 22 required to have a corroborating witness in order to 23 testify themselves as to the nature of the conversation, 24 are they?</p> <p style="text-align: right;">Page 168</p>
<p>1 asking me. 2 Q. Is there any other instance at Wayfair of which 3 you are familiar in which detailed allegations were made 4 against individuals and their denial was a major reason 5 that they were being unsubstantiated? 6 A. That I'm aware of, no. 7 Q. The denials of Mr. McDole and Mr. McKnight were 8 major reasons that you didn't deem substantiated the 9 allegations of Ms. Forsythe; correct? 10 MS. KAPPELMAN: Mischaracterizes his 11 testimony. You can answer again, Trevor. 12 A. They were contributing factors to the 13 determination. 14 Q. What other contributing factors were there in the 15 complaint against Mr. McKnight besides his denial? 16 A. I'm sorry? 17 Q. Besides his denial, what other contributing 18 factors were there in the case of the allegations 19 against Mr. McKnight? 20 A. His description of the conversation seemed 21 consistent with the report from others that she would 22 occasionally become loud and difficult to deal with in 23 those types of situations. 24 Q. That didn't have anything to do with what she was</p> <p style="text-align: right;">Page 167</p>	<p>1 A. That is correct. 2 Q. Wayfair 79 is the -- is Wayfair 79 what you were 3 calling your investigation checklist or something a few 4 minutes ago? 5 A. Notebook, yes. 6 Q. What did you call it? 7 A. Notebook. 8 Q. Investigation notebook, okay. 9 And you deemed partially substantiated the claim 10 of unprofessional emails and unprofessional 11 conversation, correct? 12 A. Those were both partially substantiated, yes. 13 Q. And the recommendation was that there be a 14 conversation with all concerned, correct? 15 A. Correct. 16 Q. PFS. Question. Statement? What is that? Your 17 own private notes to yourself? 18 A. Or a follow-up question. 19 Q. Is this a complete record of all of the 20 conversations that you had with any persons about the 21 August 14th formal complaint of Emily Forsythe? 22 A. Yes. 23 Q. Who discussed -- when did you first discuss the 24 prospect of a severance to Ms. Forsythe other than this</p> <p style="text-align: right;">Page 169</p>

<p>1 conversation you had on Thursday, September 19th?</p> <p>2 MS. KAPPELMAN: We are now getting into</p> <p>3 attorney-client privilege, again. I think we've talked</p> <p>4 about this a number of times. I don't think I have to</p> <p>5 make the objection clear, again.</p> <p>6 MR. GOODMAN: I'm not asking about attorney-</p> <p>7 client communications.</p> <p>8 BY MR. GOODMAN:</p> <p>9 Q. When did the idea of a severance first come up</p> <p>10 after the conversation on Thursday?</p> <p>11 MS. KAPPELMAN: Again, he testified -- I'm</p> <p>12 going to make my objection as clear as I possibly can on</p> <p>13 the record. He has testified many, many times that</p> <p>14 after he spoke to Emily, he spoke with counsel. I</p> <p>15 really -- I'm going to make this as clear as I can. I</p> <p>16 don't want you asking about substantive conversations</p> <p>17 that he had with in-house counsel about the subject.</p> <p>18 BY MR. GOODMAN:</p> <p>19 Q. When did the -- when did the amount of any</p> <p>20 severance to be offered Emily Forsythe first get decided</p> <p>21 on?</p> <p>22 MS. KAPPELMAN: Was it with counsel, Trevor?</p> <p>23 Or not with counsel?</p> <p>24 A. I'm not privy to that. There may have been other</p> <p style="text-align: right;">Page 170</p>	<p>1 BY MS. KAPPELMAN:</p> <p>2 Q. You testified earlier today that you were asked</p> <p>3 to conduct an investigation into Ms. Forsythe's</p> <p>4 August 14, 2019, complaints including sexual harassment;</p> <p>5 am I right?</p> <p>6 A. Yes.</p> <p>7 Q. There were three incidents that she reported of</p> <p>8 sexual harassment in that complaint; is that correct?</p> <p>9 A. It is.</p> <p>10 Q. With respect to the first incident with</p> <p>11 Mr. McDole in January of 2019, did you ask Ms. Forsythe</p> <p>12 if she had complained to anyone after that incident in</p> <p>13 January of 2019?</p> <p>14 MR. GOODMAN: Objection.</p> <p>15 Asked and answered.</p> <p>16 BY MS. KAPPELMAN:</p> <p>17 Q. Can you answer.</p> <p>18 A. I asked if she had reported her concerns?</p> <p>19 Q. And what did she say?</p> <p>20 A. She said that she did not.</p> <p>21 Q. Am I correct that during the of January 2019,</p> <p>22 Mr. McDole actually reported to Ms. Forsythe?</p> <p>23 A. You are correct.</p> <p>24 Q. He was not in position of power over her at work;</p> <p style="text-align: right;">Page 172</p>
<p>1 conversations. I was simply instructed on how much to</p> <p>2 put in the document.</p> <p>3 MS. KAPPELMAN: By who? Who instructed you?</p> <p>4 THE WITNESS: Counsel.</p> <p>5 MS. KAPPELMAN: Thank you.</p> <p>6 BY MR. GOODMAN:</p> <p>7 Q. Was there a severance agreement in existence of</p> <p>8 the kind that you ultimately sent on Monday at any time</p> <p>9 before Monday?</p> <p>10 A. Yes.</p> <p>11 Q. When did it first come into existence?</p> <p>12 A. It was either Thursday evening or Friday, I'm not</p> <p>13 sure which.</p> <p>14 Q. It was a written version of it on which day?</p> <p>15 First written version of it?</p> <p>16 A. I don't know that there were multiple versions.</p> <p>17 The dates were simply changed on the version that she</p> <p>18 presented based on the fact that she was not at work on</p> <p>19 Friday.</p> <p>20 MR. GOODMAN: Pass the witness.</p> <p>21 MS. KAPPELMAN: I only have a few questions,</p> <p>22 Mr. Shaffer. Do you need a break before we start or are</p> <p>23 you okay?</p> <p>24 THE WITNESS: I'm fine.</p> <p style="text-align: right;">Page 171</p>	<p>1 is that correct?</p> <p>2 A. That's correct.</p> <p>3 Q. She was in a position to actually evaluate his</p> <p>4 performance; correct?</p> <p>5 A. She was in a position to and had a managerial</p> <p>6 obligation to report any inappropriate conduct.</p> <p>7 Q. And I believe you also looked into a concern that</p> <p>8 she had about an interaction she had with Mr. McDole in</p> <p>9 March of 2019; is that correct?</p> <p>10 A. That's correct.</p> <p>11 Q. Did you ask Ms. Forsythe if she had complained to</p> <p>12 anyone at Wayfair after that March interaction?</p> <p>13 A. I asked if she had reported her concerns, yes.</p> <p>14 Q. What did she say?</p> <p>15 A. She said that she had not.</p> <p>16 Q. Did you ask Ms. Forsythe if she had indicated to</p> <p>17 Mr. McDole in January or March that she believed that</p> <p>18 the interactions were unwelcome?</p> <p>19 A. I asked her that question, yes.</p> <p>20 Q. And what was her response about January?</p> <p>21 A. That she did not mention it to him in either</p> <p>22 instance.</p> <p>23 Q. So the fact that Ms. Forsythe was Mr. McDole's</p> <p>24 manager, and the fact that she didn't report these</p> <p style="text-align: right;">Page 173</p>

<p>1 incidents to anyone in January or March, and the fact</p> <p>2 that she never indicated to Mr. McDole that his</p> <p>3 advances, if there were advances, were unwelcome, did</p> <p>4 that play any part in your decision that her complaints</p> <p>5 were unsubstantiated in January and March?</p> <p>6 A. Yes.</p> <p>7 MR. GOODMAN: Objection.</p> <p>8 BY MS. KAPPELMAN:</p> <p>9 Q. During the course your investigation of her</p> <p>10 concerns about Mr. McDole, did you ask her if she knew</p> <p>11 Mr. McDole before they both came to Wayfair?</p> <p>12 A. Yes.</p> <p>13 Q. And did you ask her if she knew him</p> <p>14 professionally?</p> <p>15 A. She had replied that they had worked together</p> <p>16 previously.</p> <p>17 Q. Did you ask her specifically whether she knew</p> <p>18 Mr. McDole personally before she hired him to come to</p> <p>19 Wayfair?</p> <p>20 MR. GOODMAN: Objection. Asked and</p> <p>21 answered.</p> <p>22 A. Yes.</p> <p>23 Q. What did she tell you about whether she knew him</p> <p>24 personally versus professionally before they came to</p> <p style="text-align: right;">Page 174</p>	<p>1 BY MS. KAPPELMAN:</p> <p>2 Q. Would that have been something that would have</p> <p>3 been important for you to know in weighing credibility</p> <p>4 of her sexual harassment complaint against him in 2019?</p> <p>5 MR. GOODMAN: Same objection.</p> <p>6 Q. You can answer.</p> <p>7 A. Yes.</p> <p>8 Q. I believe in testimony today you talked about the</p> <p>9 fact that Emily mentioned severance in that phone call</p> <p>10 with you that Thursday, September 19th; is that correct?</p> <p>11 A. That's correct.</p> <p>12 Q. Who was the first person to use the word</p> <p>13 "severance" during that phone call?</p> <p>14 A. Ms. Forsythe.</p> <p>15 Q. Did you say anything to suggest that you were</p> <p>16 considering terminating her employment in that phone</p> <p>17 call on September 19th?</p> <p>18 MR. GOODMAN: Objection. Asked and</p> <p>19 answered.</p> <p>20 A. Absolutely not.</p> <p>21 Q. Did you say anything to indicate that you would</p> <p>22 be willing to give her severance in that phone call on</p> <p>23 September 19th, before she brought it up?</p> <p>24 A. No.</p> <p style="text-align: right;">Page 176</p>
<p>1 Wayfair?</p> <p>2 A. She indicated they did not have a personal</p> <p>3 relationship prior to Wayfair.</p> <p>4 Q. Did she tell you that he had come to visit her at</p> <p>5 her parents' house in Cohasset before she reached out to</p> <p>6 hire him for Wayfair?</p> <p>7 A. No, she did.</p> <p>8 Q. Would that have been responsive to any of your</p> <p>9 questions that you asked her?</p> <p>10 A. Yes.</p> <p>11 Q. Specifically what question did you ask her that</p> <p>12 would have been responsive to?</p> <p>13 A. If she had a relationship with him prior to</p> <p>14 joining Wayfair. And if she had any reason to believe</p> <p>15 that he had a romantic interest in her.</p> <p>16 Q. Okay. And she kept that information from you?</p> <p>17 A. She did.</p> <p>18 MR. GOODMAN: Objection.</p> <p>19 BY MS. KAPPELMAN:</p> <p>20 Q. And when you learned, after the fact, that they</p> <p>21 had had a romantic interlude at her parents' house in</p> <p>22 Cohasset before she hired him, did that surprise you?</p> <p>23 A. Yes.</p> <p>24 MR. GOODMAN: Objection; leading.</p> <p style="text-align: right;">Page 175</p>	<p>1 Q. I think she used another qualifier before she</p> <p>2 said severance -- that she wanted severance. Do you</p> <p>3 happen to know what that word was?</p> <p>4 A. I do.</p> <p>5 Q. What was it?</p> <p>6 A. Compelling.</p> <p>7 Q. Have you ever heard the word compelling used with</p> <p>8 severance before that phone call with Emily on</p> <p>9 September 19th?</p> <p>10 A. No, I have not.</p> <p>11 Q. So when she said that she wanted a compelling</p> <p>12 severance to you on September 19th, what did you</p> <p>13 understand that to mean? What did you believe it to</p> <p>14 mean?</p> <p>15 A. That she was asking Wayfair to pay her to go</p> <p>16 away.</p> <p>17 Q. When you were asked earlier today about whether</p> <p>18 you had ever been involved with any employee who had</p> <p>19 forwarded confidential information -- strike that.</p> <p>20 When you were asked earlier today if you had ever</p> <p>21 been involved with an employee sending information from</p> <p>22 their Wayfair account to their personal email account</p> <p>23 you said, no. Correct?</p> <p>24 A. That's correct.</p> <p style="text-align: right;">Page 177</p>

<p>1 Q. Are you aware of whether Wayfair has any policies 2 about employees sending confidential proprietary 3 information from their work email to their personal 4 email? 5 MR. GOODMAN: Objection. Asked and 6 answered. 7 A. I don't know the specific policy but transmitting 8 proprietary information would seem to be a clear 9 violation of company policy and just basic common sense. 10 Q. With respect to individuals taking confidential 11 proprietary information with them after they leave the 12 company, have you ever been involved in a situation 13 where the company has gone after an individual, an 14 employee, who has taken confidential proprietary 15 information with them after they have left the company? 16 MR. GOODMAN: Objection, leading. 17 A. Yes. 18 Q. So as you sit here today, do you understand that 19 is something prohibited by Wayfair; that is, an employee 20 taking confidential proprietary information with them 21 after they leave employment? 22 A. Yes. 23 MR. GOODMAN: Objection. Calls for a legal 24 conclusion.</p> <p style="text-align: right;">Page 178</p>	<p>1 2 3 4 COMMONWEALTH OF MASSACHUSETTS. 5 6 COUNTY OF SUFFOLK, SS. 7 8 I, Lori J. Atkinson, Professional Court Reporter and Notary Public duly and qualified in and for the 9 State of Massachusetts do hereby certify that the 10 foregoing transcript is a true and correct transcript of my original stenographic notes. I further certify that I am neither an attorney or 11 counsel for, nor related to or employed by any of the parties to the action in which this deposition is taken; 12 and furthermore, that I am not a relative or employee of any attorney or counsel employed by the parties hereto 13 or financially interested in the action. 14 IN WITNESS THEREOF, I have hereunto Set my hand and affixed my Notarial Seal this 1st day 15 of September, 2020. 16 17 18  LORI J. ATKINSON NOTARY PUBLIC ***PLEASE NOTE*** 19 20 21 22 23 24</p> <p style="text-align: right;">Page 180</p>
<p>1 BY MS. KAPPELMAN: 2 Q. So as you sit here today, have you ever been 3 involved in a situation where an employee, who is on 4 their way out of the company, sends themselves, to their 5 home address, confidential proprietary information so 6 that they can secrete it out of the company? 7 MR. GOODMAN: Objection. Asked and 8 answered. Assume facts not in evidence. 9 A. Yes. 10 MS. KAPPELMAN: That's all I have. Thank 11 you. 12 MR. GOODMAN: Nothing here. 13 MS. KAPPELMAN: Thank you, Trevor. 14 THE VIDEOGRAPHER: The time is 4:08 p.m. 15 Eastern time. We are going off the record. This is the 16 end of media file number five. That concludes this 17 deposition. 18 19 20 21 22 23 24</p> <p style="text-align: right;">Page 179</p>	<p>1 2 THE FOREGOING CERTIFICATION OF THIS TRANSCRIPT DOES NOT 3 APPLY TO ANY REPRODUCTION AND/OR DISTRIBUTION OF THE SAME BY ANY MEANS UNLESS UNDER THE DIRECT CONTROL AND/OR 4 SUPERVISION OF THE CERTIFYING COURT REPORTER. 5 DEPOSITION ERRATA SHEET 6 Case Caption: FORSYTHE vs. WAYFAIR 7 Deponent: TREVOR SHAFFER-FIGUEROA 8 Deposition Date July 27, 2020 9 To the Reporter: 10 I have read the entire transcript of my Deposition taken 11 in the captioned matter or the same has been read to me. 12 I request that the following changes be entered upon the 13 record for the reasons indicated. I have signed my name 14 to the Errata Sheet and the appropriate Certificate and authorize you to attach both to the original transcript. 15 Page No. Line No. Change to 16 17 Reason for change: 18 Page No. Line No. Change to 19 20 Reason for change: 21 Page No. Line No. Change to 22 23 Reason for change: 24 Page No. Line No. Change to</p> <p style="text-align: right;">Page 181</p>